Docket No. (1)

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

In The

Supreme Court of the United States

Douglas G. Hilgers

Petitioner

v.

State of North Dakota

Respondent

On Petition For Writ Of Certiorari

To The Supreme Court of North Dakota

State v. Hilgers, 2004 ND 160

PETITION FOR WRIT OF CERTIORARI

Douglas G. Hilgers
In Pro Se
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(218) 624-5585

Questions Presented:

¶1 In the case of State of North Dakota v. Doug Hilgers, In it's prosecution and conviction, under a North Dakota Statute, criminalizes the civil case and long standing, pro se efforts of Doug, to represent his Son's plight in the civil Courts.

¶2 The hamstrung Jury, in it's efforts, as well, to protect the un-represented child, issues the statement, before verdict, with the approval of the Court.

> " We the Jury in the entitled matter, find that; We have grave concern for the health, welfare and safety of B.T.L. and that the system has failed him. miserably."

¶3 The Jury's statement is then removed from the file of the case by the trial Judge.[app. # 17,p.31]

¶4 Upon only a small part of evidence ex-culped, by the pro se defendant, at trial, a different civil trial court, 3 days later, upon Doug's hand written petition:
Ordered:[app.314,p.28,29]

> "The Court, upon the receipt of the documentation from the defendant Douglas G. Hilgers, issues a temporary change of custody as it relates to B.T.H., now residing with the plaintiff, Brenda M. Hilgers. A temporary custody order will be in effect immediately and the defendant is directed to immediately pick up his son and remove him from the situation that he is presently in."

¶5 Never the less, Doug remains a convicted felon, subject to the prejudice and loss of privileges there in, Subject to revocation of his probation and a 5 year prison sentence: All relief, to present, denied by the State trial and appellate Courts.

¶6 As in Higers v. Hilgers 2002 ND173 ¶29, demonstartes that through the intrusion into the delicate and cherished Constitutional protected relationships, in the state courts;

> " The district court abuses it's discretion when it fails to address non-frivolous issues presented to the Court."

¶7 As in Purdy v. Flemming, 2002 SD 156; A North Dakota Custody case, ¶15-17, a five year old child, Amanda, sexually abused and murdered: "with no adequate assessment done¶39; it takes a strong judicial stomach to set aside one's emotions"¶69 The written report to a north Dakota Judge, by Liz Thorn, contained a graphic description of Thorn's interview with Amanda." demonstrates the critical issues faced this dramatically growing group of non-custodial parents trying to protect the interests of their children, under vague and overly subjective standards of review, without protection, under the U.S. Constitution U.S., Amendment IV, equal protection, as here to for afforded other significant groups upon other constitutionally protected areas , .e.g. Shapiro; Troxel; Interest of M.L.B.95-b53 U.S. (19960; Bode v. Connecticut, 4101 U.S. 656,661 ; (divorce proceedings) " The Court has long required when a family association basic importance of our society is at stake." And Griffin through Mayer ;"Extending though petty offences and quasi-criminal cases; and Ortwein v, Schwab, 410U.S. 665,661 With respects to ' examines closely the government interest in defense of intrusion.

Question #1: In the case of the criminalization of Hilgers v. Hilgers, the State, intentionally circumventing the Civil processes of the Uniform Interstate Child Custody Protection Act; Committing Hilgers to Criminal charges by preventing him the process given under the N.D.R.Ct Rule 8.2 and NDCC Contempt Ch. 27-10: Denying the Child a Guadrdian ad litem[1]. Does this cases/cases,[2]

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[1] In 2001 N.D had only six qualified G.A.L.s to services the children of the whole State; The trial Court was expressly unaware of the 2001

[345]**Under the Amendment XIV, U.S. Constitution; In their growing numbers, deserve such equal protection and due process?**
Would B.T.H. and Amanda be healthy and alive if, as a matter of right, they had legal advocates or benefit of the Interstate compact, as designed, to protect the best interest of the Child?

Question #2. Do the facts and law of the criminal conviction and appeal, violate the State's application of law and a standard of review of, solely civil, cases [Christainsen: Flattun-Riemer, at ¶19] **comport with Hilgers' protection under the U.S. Constitution due process and equal protection guarantees established in : Ingram; Griffin; Hardy v. U.S.; thereby prejudicing other criminal and quasi-criminal defendants, under this standard of review who cannot afford access to the record in the time required under Rule?**

> State v. Hilgers 2004 ND 160 ¶¶12,23,34,36, 39,40,41 "we will decline to review an issue if the record on appeal does not allow meaningful and intelligent review of the trial court's error"

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revisions in law; Its funding remains dubious and Doug was never afforded the protections of assistance of Counsel

[2] N.D.S.C. Case types

Year	No. Reviewed	Pro Se	Family Pro se	Criminal Pro Se
1999	382	81	19	19
2000	365	65	5	12
2001	307	49	5	16
2002	353	67	12	24
2003	361	55	6	18

[3] N.D. has over 2,000 divorces/annum; 770,000 contested divorces per annum, nationally

[4] N.D. Does not denote data on No. of out state litigants or G.A.L. assignment

[5] North Dakota has no family Courts or active use of Appellate Courts

¶8 In the petitioners appeal, State v. Hilgers 2004 ND 160 (Criminal) the opinion, at multiple sites it's inability for meaningful review due to ¶¶19,36,41 Hilgers providing no record of the trial; The Court claims to have reviewed the file thoroughly¶¶8, "based on the record": there is nothing in the record to indicate" Where as, in ¶20 ' Because Hilgers did not provide a transcript...." It is clearly demonstrated that the relevant statements were made from the States, allowed, partial transcript Re; it's apposing Doug's Petition for Stay of Judgement pending appeal App: #25 pg. 37;

¶9 It is apparent that both State v. Steen 200 ND 152, 615 N.W.2d 555, The court must make a record of controverted facts: State v. Beckman 1999 ND 54, 591 NW 2d 120, The right to address the Court at sentencing with a written report of sentencing required by N.D.C.C.

¶10 The written record is profuse of Hilgers attempts to obtain relevant transcript at sentencing as well as for appeal: He had asked for a stay to have time and to prevent his professional nursing license from being compromised in order to earn enough to purchase it: One of the transcript requests was for the: App. 20,21, pg. 34-36

> Court's statement, at hearing; " I know that you don't have any money."

Hilgers was advised at App.#10, Pg 25-26, upon his petition for more time for the transcript;

> " to address it in his brief" [App. 10,p.25-26] ,

¶11 To address the prior cases forwarded by the State/the Court to legitimize this flawed standard derived from both Christainsen v. Christiansen 2001 ND 120, 630 2d482 NW and Flattum - Riemers, 2003 N.D. 70,¶8 660 N.W. 2d558 They are both civil cases applied retro- spectively to the Trial of Hilgers (see also State v. Lemons 2004 ND 44; Hilger ¶22," We have recently addressed the issue of telephonic testimony, " :"Because there is no precedent").

Christiansen; A divorce/alimony/support case in which the defendant still received relief: in pro se representation

Flattum-Riemers: Also a civil case , in pro se and with respects to Question 1; The Court tolerated the relocation of 3 of the 4 children, to Central Asia, for an undetermined period of time, into a geo-politically unstable region; after changing the venue of hearing far from the appellant's home.[6]

¶12 There were 31 issues raised on Appeal, most negated, as without merit, due to the lack of record.¶43; Many raise basic rights/significant error issues and will be addressed , as tolerated, in the Statement of the Case/Opinion. They were requested as preserved in Rehearing Petition and, Respectfully, here as well.

Question#3. Does the process by which Hilgers' Defense Counsel was removed, The submission to trial, conviction, sentencing and appeal, without provision for assistance of counsel, without waiver, satisfy his fundamental rights under application of North Dakota Law, and protection of the U.S. Constitution, Amendment IV, VI, thereby, under the precedent established in State v. Hilgers , subject other criminal and quasi-criminal defendants to prejudice and lack of meaningful review?

¶13 At the time of the Initial Appearance, September 13, 2002, State v. Hilgers, under North Dakota's new criminal law Ch. 12.1-18, Kidnapping stemming from the N.D.R.Ct Rule, 8.2; " Ex-Parte Interim Orders in Domestic Relations Cases"[7],[8] the civil case, Ward County 98-C-0959 was now 4

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[6] As in Hilgers v. Hilgers, the venue went from Minot to Williston, to Grand Forks and back to Minot see insert: map of N.D. Judicial Districts

[7] This action was brought by Doug's past attorney McIntee, now representing his ex-spouse, Brenda.(the court so informed)

years old and Doug had not been able to afford legal counsel since the first hearing in an effort to remedy the "default divorce judgement", transacted more than eighty miles from the parties home. August 31, 1998. Now a resident of Minnesota, he had come to The North Dakota Supreme Court, at Bismarck, to argue the appeal of his civil petitions for visitation and guardian ad litem appointment for his son, the extraordinary child support amounts and the contempt citation issued from the interim order but denied hearing on either issue,[9] as prescribed under statute: He was arrested as he left the Supreme Court chambers. He had been ordered to

> Have no contact with the minor son, B.T.L. until the Court so ordered, which has never been rescinded to this day."[10]

He had been denied extradition: Denied benefit to responding to a summons in lieu of a warrant[NDRCrimP Rule 4.] He was refused a copy of the warrant with which to respond: This Rule 8.2 petition, [11]specifically requested that Doug not be allowed to enter North Dakota;[12] He was taken 180 miles, to Bottineau County and held without access to a telephone or access to legal references; He, at initial appearance was granted public "stand by council" but he did not appear at that time; His youngest son, now 16, continued to have to live outside the "custodial "home and, at oral argument, Brends expressed to the Supreme Court that:

> "B.T.L. was 16 and he could leave any time he wanted to."

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[8] Cannon 3,of NDR Judicial Conduct, conditions ex-parte orders

[9] The Case remanded back to the trial court but the Contempt Order never even mentioned .

[10] The irrefutable facts , conspicuously ommitted from the opinion State v. Hilgers

[11] At pretrial hearings, the prosecution referred to this action as, "a minor collateral matter: see N.D.R.Judicial Conduct, Cannon 3 re; reporting attorney misconduct to the appropriate authority.

[12] Rule 8.2, for purposes of restrain, reqires 'in person testimony"

Hilgers v. Hilgers 2002 ND 173, ¶29 : "The trial Court abuses it's discretion when it fails to respond to non-frivolous issues presented to the Court."
The Trial Court, now seated in Williston, N.D.[see map insert] refused to issue orders and recused himself.
¶14 Doug had accrued $22,000 in arrears from $900.00 the first week of the divorce Judgement, even though fully employed as a registered nurse, his wages subject to 50% withholding of his wages, now 65%. He had to borrow $2000.00 from his Sister to get legal counsel.[13,14]
¶15 All potential savings were dedicated to the family home, in Northwestern Wisconsin, built by Doug and his Brother, without a mortgage. All four of the Families Children were raised there. The family had moved to N.D. because of the shortage of nurses in The Indian Health Service and so Brenda could be closer to her family: There was never any plan not to return to WI. If divorce was eminent, Brenda had asked that the homestead be given over to the children (2 then minors): However, because Doug was not represented at the divorce hearing, not yet back to work after his second heat attack; Brenda achieved total control of the homestead, although, by order, directed to sell it and give Doug half of the proceeds. She has not; nor has she ever returned there to maintain it, or contribute anything toward the delinquent taxes in order to preserve it for the children. At the time of the criminal trial, there arose the first " in-rem" tax foreclosure of $7,000 in spite of Doug's best efforts to pay them.[15]

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[13] In 2002, Doug's fiancée had to file bankruptcy due to the burden Doug placed on her.
[14] Although this required a simultaneous appeal as the criminal case, filed August , 2003, returned under supervision,, upon explanation to the Criminal Court, Judge Foughty advised ,"just write the Judge a letter"
[15] At sentencing, the criminal trail Court adressed Ms. Hilgers, as well, to sell the property(he had read the divorce decree)

¶16. Due to Brenda's continual efforts to disrupt Doug's employment,[16] he and the children were now without health insurance. The C.S.E.U. of Minot rejected Doug's petitions for review even though he now had to go without his prescribed medication and the "C.P.A,P," respirator that he required, at night, to treat his sleep apnea and help stabilize his heart disease.[$100.00/mo.] In November 2003, Doug required treatment and incurred over $2,000 in medical bills; not being able to afford more definitive testing and treatment to stop his coronary artery disease from progressing.

¶17. On June 4,2001 , making the 1000 mi, round trip, to return B.T.H. to Engelstads each weekend, we struck a moose, Doug fracturing his 1st cervical vertabrae, totally destroying his 17 y.o. car and being removed from work[without sick pay] until August[with restrictions] . He could not afford another 17 y.o. car for another 6 mo. St. Louis Co., MN., Social Services vouched Robyn Engelstad, the gas money to pick B.T.H. up in Grand Forks ,MN.: No one else would assist, including the mother.

¶18 Doug had not had an attorney, now, in over 2 years; He was denied legal assistance because Brenda received it.

¶19 All of these considerations, not all inclusive, not even mentioned in the decision were offered to the Court in "in and out of camera exhibit, to justify " without undue hardship" for public defense council.

¶20 Due to the strain on his health and the 1000 mi. drives Doug made dozens of attempts to secure pro-bono and other assistance. Through the NDBA Referral Service , all he obtained was "send me the file and I'll see what I think"

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[16] The MN. Court's issued the order that Brenda was not to be informed of Doug's employer: Although the N.D.Courts were notified, they readily advised her.

Parties To the Proceeding:

For the Petitioner: Un-represented/ In Pro Se
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(218) 624-585

Previous Appointed Council [17]
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For the respondent: State of North Dakota
The Office of the North Dakota
Attorney General-Wayne Stenejem[18]
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The Un-represented Child:
B.T.H.
911 S. 72 nd Ave. W.
Duluth, MN., 55807

The Complainant: Brenda M. Hilgers[19]
211- 4th St E.
Bottineau, N.D., 58318

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[17] Mr. Hartyl, at a previous time, was appointed as the petitioners appointed public counsel and was released and replaced by Michael McIntee. Mr. Hartyl did not, overtly, inform the Court of this fact.

[18] The N.D. Attorney General, chaired the Family Law Committee, introducing the bill/law, the petitioner was prosecuted for.

[19] The complainant was represented in the civil case by the State's Attorney of Bottineau, Co., N.D. Swain Benson, who arranged for Michael McIntee to represent her.

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The North Dakota Constitution

(U.S. Constitution Ratified by North Dakota Feb. 17, 1911).

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2. 'Restrain" means to restrict the movement of a person unlawfully and without consent so as to interfere substantially with his liberty by removing him from his place of residence or business, by moving him a substantial distance from one place to another, or by confining him for a substantial period. "Restrain ' is without consent " if it is accomplished by force, intimidation, or deception; or b. any means including acquiescence of the victim, if he is a child less than 14 years old or an incompetent person, and if the parent, guardian, or person or institution responsible for the general supervision of his welfare has not acquiesced in the movement or confinement. See: legislative testimony/ /Intent Re; "Kidnapping"; "Abduction"

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N.D.R.Crim.P. Rule 31,e, 4, When a defendant interposes any other defense which can not be reflected in a special verdict and the evidence and defense is given at trial, the jury, if it so finds shall declare the fact in its verdict.
c. All proceedings connected with the taking of exceptions must be in the absence of jurors an a reasonably sufficient time must be allowed counsel to take exceptions an note them in the record of the proceedings; see State v. Schafer/Imhoff, 2 days

Other

The Uniform Child Custody Jurisdiction Act MN. §518.D(.204) Temporary Emergency Jurisdiction[20] ii,6

A court of this state has temporary emergency jurisdiction if the child is present in the state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, sibling or parent of the child is subjected to or threatened with mistreatment or abuse. "Abandoned"-Means left without provision for reasonable and necessary care or supervision See NDCC 14-09-22. Abuse or Neglect of a Child-Penalty(a),(b)

Dakota Legal Council for Indigents Rules 24

North Dakota Administrative Rule, Pattern Jury Instructions Rule 23 Rule 4. "Limitations", "All pattern Jury Instructions shall show that they are published only for pg20

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[20] Although North Dakota endorses the "Act/Compact" it uses a criminal expedient: Unknown re: these circumstance, Doug petitions the MN. Court's, 8/01,in that the Civil Court refuses to acknowledge the factual basis of abandonment not withstanding the evidence of abuse concealed by the State and it's Agencies, for months and years.

the Bench and the Bar and that publication does nor imply approval or authoritative construction by the Supreme Court."[21]

NDCC Ch§ 299 Judicial Procedure, Criminal pg26
"Indigent Defense Services and Costs March, 2001 Re: reviewable by Supreme Court. Re Recoupement of costs (chilling effect)

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pg24

The State of the Court Address, June, 2004-[sic. Rehearing Petition]
The Honorable C.J. VandeWallePg.2¶
4-6, Pg3 ¶2 i.e.: The 2003 Legislature adopted another study resolution which recognized the conflict arising from the administration of the indigent defense system by the judiciary as well as the present system is underfunded. Although the 2001 interim study did not result in legislation to resolve the problems, it did serve to increase awareness that we are in trouble with our current system."[22] [23]

" The legislative Assembly needs to know about the deficiencies of our present system and the need for change."

" The lack of funding has exacerbated the flaws inherent in our current system" N.D. less than 1/2 of the average funding than any State(9)in the Spanengberg Group Study ($3.23/cpatia: average $8.54/capita; ie Montana $10.22/ capita

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[21] Although use of PJI and even Civil PJI use by prosecution and Court was addressed on appeal, not mentioned in opinion.
[22] As represented in the Petitioners, unheard, rehearing petition.
[23] In addition to the multiple conflict, the writer of the Opinion, in State v. Hilgers sits on the Committee sited.

pg 24

The North Dakota's Legislative Counsels Background Memorandum: Indigent Defense and Public Defender Systems including State v. Smith 9arizona (1984)
In entirety i.e." Cost is usually the factor determining what type of indigent defense system a state or county adopts"

The other cases: see Cruel and unusual See gender bias
State v. Gracey, Jaime-5 days in jail, $200 fine

State v. Roehrich, (ex-parte custody order) Michelle-4 months probation no fine

State v. Renita Paul- Canadian citizen, from Tribal Court- no extradition

State v. Sorenson filed 7/30/02, (Grand Forks case) public defender, appearance by phone from Nevada)

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pg 5,6

Re: The legislative history of the Law (N.D.C.C. §
Ch. 12.1-80-05 " parental Kidnapping"
N.D. Senate Bill 2046(prev2130) 2000-2001, (previously HCR
3005) "Divorce And Custody and Support"
Initiated from a survey mailed to the members of the family law section of the of the State Bar Assoc. of North Dakota. (Statutory review)
Prior Kidnapping Law "inadvertently removed "upon the 1999 adoption of the Uniform Child Custody Jurisdiction Act ("the working group agreed this was an oversight")
Testimony; " One concern is the abuse and your non-custodial parent who can't do anything. Who do the children

turn to? A non-custodial parent should have the right to protect the child."

Purdy v. Flemming 2002 SD 156- ¶ 15,16,17,39, 69,The murder and sexual abuse of a 5 year old child-Oddly, the child resided in North Dakota, subject to N.D. Custody determination-The custodial parent's psychologist Ordered to evaluate the whole family: the child without G.A.L. and never interviewed. No, substantial social assessment done by N.D. or S.D.

¶15, " The dept. of Social services, of North Dakota Amanda was visiting in this state with her mother at the believed south Dakota had jurisdiction in the matter because time of the referral.

¶16 Because of the allegations of Amanda against her father, Purdy moved to have a custody arrangement modified in North Dakota (Would an action under the Uniform Enforcement Act, saved Amanda's life?)

¶17 was Amanda's substantive de process right of bodily integrity under the Fourteenth Amendment violated?

¶39 It takes a strong judicial stomach to set aside one's emotions concerning unspeakable acts inflicted upon Amanda and impartially review them against applicable law ¶ 69 (6). The written report to the North Dakota Judge by Liz Thorn contained a graphic description of Thorn's interview with Amanda ——" she wished that with my wishing wand that I could teach her daddy not to touch her on her private places"

See Dicipline of Wilka, 2001 SD 148 638 NW2d 245

> Clearly the requirement of candor towards a tribunal goes beyond simply telling a portion of the truth. It requires every attorney to be fully honest and forthright. We can not over emphasize the importance of attorneys in the state being absolutely fair with the court. Every Court has the

right to rely upon an attorney to assist it in ascertaining the truth of the case before it.

Is there really a Fatherhood Crisis? By Dr. Stephen Baskerville pgii

April, 2002, The social impact of governmental interference- "What we see in the "fatherhood crisis" may be an optical illusion. What many are led to believe is a social problem may in reality be an exercise of power by the state."

"One might interpret this statistic (Brinig and Allen; women file for divorce in over 70% of cases" Not only do they file more often ---they are more likely to instigate separation";" We have found that who gets the children is the most important component in deciding who files for divorce") to mean that what we call divorce has become in effect a kind of legalized parental kidnapping."

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pg.24

From: Request For Court-Appointed Counsel
In The District Court-State of North Dakota
Before Lester Ketterling --Pg. 2 #11.
" That the defendant understands any material misrepresentation herein could subject the defendant to a felony charge of perjury pursuant to Section 12.1-11-01 NDCC and the charge of false statements pursuant to section 12.1-11-02 NDCC." re: The trial Court's statement, at hearing" you have concealed assets" and the defendant demanding trial in the matter, hereby denied benefit of.

North Dakota Code of Judicial Conduct, Canon 3, D. et.al. Disciplinary Responsibilities: (1) A judge who receives information indicating a substantial likelihood that another

Judge has committed a violation of this code should take appropriate action.....Inform the appropriate authority. (2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules inform the appropriate authority See: McIntee, See; Bennett, R.; Byres,J.; Responsibilities of a Prosecutor

7. (a) Ex-parte communications (are authorized provided) that no party will gain a procedural or tactical advantage and allows an opportunity to respond

The United States of America
In The Supreme Court

Doug Hilgers
Petitioner

v.

U.S.S.C. Docket
No._____
(Application No. 04A495)

State of North Dakota
Respondent

Petition for Writ of Certiorari

From the Supreme Court of North Dakota
2004 ND 160

Upon the Criminal Conviction and Sentence, at Jury trial, March 26,27, 2003 having to proceed pro se, over his objection, at every phase of the proceedings.[1][2][3][4]

The Jury was hung, without a single defense jury instruction, and upon invitation of the Court, entered the statement, along with the verdict " We the Jury in this matter, find that we have grave concern for the health, safety and welfare, of the child, and find that the system has failed him

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[1] The Petitioner requested a stay until the Orders to remove his council were reviewed by the N.D. Supreme Court-Denied

[2] The Petitioner's council was removed without hearing on the matter-The Council did not resist

[3] The Petitioner Requested a Supervisory Order from the N.D.S.C.-Denied

[4] The Petitioner was denied any continuance to represent his defense, to respond to other cases, or to seek/attain assistance.

miserably."[1] see Jury Foreperson's statement as entered at Sentencing and Civil Custody Hearing App.#18 pg. 32-34

On April 2, within a week of conviction, the convicted Father, upon his petition, to the Civil Court, with only a small amount of evidence exculped and largely concealed by the agencies [2]of the complaint's home town and limited subpoena privilege and discovery, Doug was able to gain custody of his son and

" Immediately remove him from the situation that he was in" App. #14, pg.29

Sentenced, [3], [4]then to 18 months in prison, fined $1,500, costs, and his subpoena fees, To get and pay for a psychological evaluation before June, and 3 years of supervised probation (in Minnesota) and the cost there of with the stipulation among others " that he live alone".[5] And that he be subject to s sexual predator assessment. Prison time was suspended but Doug remains in jeopardy of a 5-year prison term. He relies on the protection given under Alabama v. Shelton____--U.S.___(2002)

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[1] This statement was removed from the record, by "request of the trial judge" see App. 17 pg. 31: He denies this at sentencing.

[2] The Trial Court requested a copy of the photographs from Swain Benson and possessed them at trial and at sentencing.

[3] The Trial Court expressed a specific cause to sentencing to prison, this an established perjuouse statement of the complainant (deemed by her local prosecutor to be" an inconsequential exaggeration") as, well not entered into evidence by the prosecution or heard by the jury. see Blakely v. Washington

[4] On appeal, the Higher Court claimed no record to refer to although under N.D.C.C. § 12.1-32-02(6), " All sentences imposed must be accompanied by a written statement by the court setting forth the reason's for imposing a particular sentence. The statement must become part of the record of the case." And State v. Steen ND 152,615,N.W.2d555 " The court must provide a written record of pre-sentence controverted facts"

[5] See U.S. Constitution/Bill of Rights Amendment VII " nor cruel and unusual punishment be inflicted"?

For a violation of North Dakota Century Code Ch 12.1-18-05.

"Removal of a child from state in violation of a custody decree-Penalty.-- Any person who intentionally removes, causes the removal of, or detains the person's own child under the age of eighteen years outside this state with the intent to deny another person's rights in violation of an existing custody decree is guilty of a class C felony. Detaining the child outside this state in violation of a custody decree for more than seventy-two hours is prima facie evidence that the person charged intended to violate the custody decree at the time of the removal."[1]

N.D.C.C. Ch. 12.1-32-01,4., A class C felony, for which a maximum sentence of five years imprisonment, a fine of five thousand dollars, or both, may be imposed.

Jurisdiction

I.

The petitioner seeks the discretionary review if the matter including any such supervisory capacity, as deemed consistent with substantial Justice, pursuant to Article III, of the United States Constitution and 28 U.S.C.§ 1257(a).

That the Petitioner has exhausted his Appeal to the Highest Court of the State, Ordering the Conviction AFFIRMED, August 4,2004, [app.#8,p.9-11] , and having been granted Petition for Rehearing, his petition was DENIED September 15, 2004[2] [app.# p.6-8][upon technical grounds?] that it was

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[1] In the "Opinion", the Court eludes to only part, of the statutory language

[2] On December 4, 2004, the petitioner, upon the findings of the Jury; the effort to subpoena his missing, cooperative witness re; the abandonment of the child and not present at the criminal trial: et. Al. Has petitioned the founding Civil Court for a new trial of the custody, contempt, and sanctions issued by the Civil Court, this, even though no hearing or review has yet been granted.

2 pages too long and did not leave sufficient left hand margin.[1]

Application was made, to this Court, for Extension of Time to File for Cetiorari, November 30, 2004-Extended to Jan. 13, 2005. [app.#1 pg. 4].

The petitioner applied to the Trial Court for a "stay" in order to conduct his criminal appeal and the simultaneous civil appeal of (Hilgers v. Hilgers, (2004 ND 95,679, N.W. 2d447)- the civil case then 6 years old, and motions pending for nearly 2 years.

> "these issues are clearly and repeatedly raised by Douglas Hilgers numerous motions filed with the Court" at ¶ 22-- DENIED

As above, the petitioner applied to the N.D. Supreme Court to conduct his appeals, as well and to avoid sanction/removal of his professional nurse's license and that he not have to live "alone ". --DENIED,[app.#13,p28]

The petitioner attempted to petition this Court for an extraordinary writ for protection during pendancy of appeal but it was DENIED upon technical issues. (9 in all), [app. 311,p.26]

As well, the petitioner requested the assistance of Council, for his appeal: DENIED by the trial court and expressed by the Supreme Court" that it could be brought as an issue in brief". Nor was he advised by the Clerk, Under N.D.C.C. Ch 29-32.1-03, (6) as required, in how to petition for legal assistance in post conviction relief. see State v. DeCoteau 464, N.W. 2d 605(ND 1990)

His petition for Stay of the Mandate, upon petition for Writ of Certiorari U.S.: also DENIED.

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[1] The petitioner had requested relaxation of the Rules, in the body of the petition, due to the fact that the opinion contained so many errors of fact of the civil case(Hilgers v. Hilgers 2002 ND 173,653,N.W. 2d79) and criminal case, at App. #6 p,7,8

Statement of the Case/Cases
II.

A. The Law

As raised at trial and on appeal, "a new old law' as expressed by J. Byres, Asst. N.D.A.G., "We wanted our own law to prosecute kidnappings rather than use the Interstate Act".(N.D. was unable to jail Shafer-Imhoff in 2000) In that there was no alleged "kidnapping " and no "abduction" in the criminal charges nor any factual similarity to such an act. As well, the legislative history of the law[1] would reflect a significant question of the validity of the bill, in it's passage, as to compliance with the North Dakota Constitution Article IV, Legislative branch" Section 13,....."No bill may embrace more than one subject, which must be expressed in it's title.": Titled "Divorce and Custody and Support". Senate Bill 2046 included 13 sections including the criminalization of civil cases.

The legislative Council, Yvonne Richter, testified that

> "this one was different from all of the other 12 sections"

There was testimony that "One concern is the abuse and your non-custodial parent who can't do anything. Who do the children turn to? A non-custodial parent should have the right to protect the child." and" A vindictive spouse could use it against the other parent."

In the N.D. 2000 Legislature, the Criminal law was entered as S.B. 2130 as a stand alone bill for N.D.C.C. 12-18.1-05 "At the urging of the Attorney General", It was immediately withdrawn: There are no note or deliberation available to explain why.

It was then reintroduced as S.B. 2046 by the "Family Law Committee" and refereed to the Judiciary Committee.

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[1] After months of requesting the history, Doug had to file a Freedom of Information Demand, to obtain it.

The Family Law Committee was charged by the Supreme Court to review needed changes in Family Law. The same individual who then prosecutes Doug chaired it: the N.D. Attorney General. see separate but equal; State v. Hansen N.D. and N.D. Constitution

The Committee then determines that this law "was inadvertently deleted, from statute, upon the adoption of The Uniform Interstate Child Custody Enforcement Act, 1999". N.D.C.C.§ 14-14.1: The Legislative Librarian relates that there are no notes or transcript to verify this.

It is represented that the issues for Family Law review arose from a questionnaire solicited to the North Dakota Bar Association although testimony does not include exactly what the results of the "questionnaire" indicated. See; North Dakota Constitution Article I, Section2, 'All political power is inherent in the people" i.e. not the state Bar association. As per their lobbyist, again, to address "abduction and kidnapping of children." .....ultimately prosecuted as "removal of a child from the State" where as, in the course of every day life, and common sense would dictate: many children are removed from North Dakota, perhaps, on a daily basis. See; Bearden, 461 U.S. at 664-665(1983) " A law nondiscriminatory on it's face may be grossly discriminatory in operation." Doug was refused extradition or stay or any protection to pursue his civil case and Son's interests in N.D.; McIntee taunted, in his letter to the Disciplinary Board " Maybe Doug Hilgers, before coming to the hearing should talk to the police or Mr. Bennett. In actions against the Child Support Unit, Brenda provided them with a copy of the warrant so they could seek my arrest, if I came there for services.

Doug raised this issue to the Clerk of Court: "We do this all the time".

The dilemma posed by such " discrimination in application" is that the parent must sacrifice their own defense for the welfare and interests of the child.

In fact, upon appeal, Doug asked of the Court---What would be his demise if, under the same facts, if he were a resident of North Dakota? There was no response nor was it addressed in Opinion. See; Amendment XIV. U.S. Constitution; equal Protection: Article IV., Section 2, U. S. Citizens of each State

One must wonder, in that Ch. specific language indicates "detain" applies to only children"under 14 years of age, B.T.L. at the time of the alleged offence, 15 y.o.

It has also been asked: What is the purpose and intent of perpetuating the Statutory Law of The Interstate Act / Compact? Was it "inadvertently" approved by the Legislature?

Doug, unaware of this new/old law and forwarding the fact that the N.D. Civil Courts refused to observe B.T.H.'s abandonment and his physical and emotional abuse and the failure of the Courts and social services to facilitate his dental and medical care, sought petition under the Interstate Act, (MN.) Temporary Emergency Custody in Abandonment: To prevent physical and emotional harm. See: the missing witness, Tweeton; Without solicitation, a prior Sheriff's dispatcher, when Doug went there May 15, 2001 to report again, the multiple beatings and the fact that Birch had to live in a neighbor's home, Tweeton advised Doug that he had , at least twice, witnessed the mother , that Spring, advise the Sheriff that" she no longer wanted the Child in her home. Tweeton months later agreed to testify to this at the criminal trial.[1]

Michael McIntee, Doug's prior attorney, at Swain Benson's request, represented the mother seeking Doug's prosecution and arrest. See: N.D.R.Prof.Conduct and N.D.R.J.Conduct, Cannon 3, Re: Reporting requirements[2].

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[1] Doug did not know Tweetons 'name and the Sheriff refused, to divulge it to him, repeatedly, even upon written demand..

[2] Doug immediately informed the Trial Court of the Conflict of Interest

Doug immediately began to seek help to return B.T.H., even before any MN. hearing (he had incurred a broken neck upon the 3rd trip taking him between Engelstads' home to finish school and his home in Duluth. B.T.H. had threatened to "run", he had no work and no car, and his fiancé's father was acutely ill and dying.)

McIntee, although not licensed to practice in MN.. advised the Bench that Doug was to be arrested at any moment and the mother would then come to Minnesota, after he was arrested: The Court never accepted a word of testimony from B.T.H. Doug was in, almost daily contact with the N.D. Court, the N.D.A.G., MN. and N.D. Social Services, and his older children to assist to return the now, 15 year old child: See:N.D.C.C.Ch. 12.1-18-04 "definitions" Restrain " less than 14 years old"" The mother never came to get him.. She, in fact, before the trial Court stated" Doug, just fill out the papers "and before the very Court that turns down this appeal, B.T.L". can leave any time he wants to". Upon custody reverting to Doug, she never even requested visitation, Doug did this for B.T.L.

B. The Civil Case Hilgers v. Hilgers Ward County 59-C-0959: 2002 ND 173, 653N.W. 2d 179 and Hilgers v. Hilgers 2004 ND 95, 679, N.W.2d 447 1998 - present

The case, after a 18 year marriage, 4 children and a very close father / son relationship between Doug and B.T.H., then 12.

Doug had incurred his second heart attack while working in Indian Health Service and had to go to the private sector, taking a significant wage cut, that Brenda was not at all happy with.

The Supreme Ct. has been advised of it for years 2002 Hilgers v. Hilgers, without mention.

Although the divorce was filed in June 1998, Brenda quit talking to and providing information to her attorney. Her attorney persisted in pushing the issues.

At hearing, Dec.7, 1998, She denied this multiple times, in testimony, even though substantiated in record of another hearing.

She, in ex-parte had accused Doug of locking the "family freezer","to obstruct the children from getting food" et. al In actuality Doug place a lock on the freezer in the garage, with the key on the wall, for safety reasons. Brenda, in fact, had refused to purchase groceries unless she had complete control over family finances.

Doug's petition for perjury charges was left in the Sheriff's drawer for months "I didn't know what to do with it." The local prosecutor called them " inconsequential exaggerations at most": The complaint disappeared under the administration of her ,now, personal attorney/States Attorney.

Doug was expressly sentenced to prison based upon this allegation of the freezer, that the "Trial Judge read in the Divorce"[1]

Doug has had to dedicate the last six years to protecting his Son, attempting to gain review of the original Child/Spousal support orders with 65% withholding in force, $22,000 arrears, and all the attending action i.e. Hilgers v. Minot Child Support, in U.S. Court and Hilgers v. McIntee: McIntee timed his dismissal motion for at the time of trial see "Continuance" ¶ ¶37,38. Hilgers had to sustain simultaneous appeals after sentencing. He could not pay the docket fee until November, 2003 when he was able to attain a stay of the collections in the civil case. The homestead, at issue came up for tax foreclosure at the time for trial requiring $2000 to protect it for the minor child see 'Continuance" good cause"¶¶ 37,38. These, et. al. in the

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[1] At trial, the prosecutor requested and received a limitation of scope of evidence from February 2001 to September 2001 exclusively, but violated it many times.

record but never mentioned upon appeal. and requiring the 1000 mile trip at least every 2 weeks.

In opinion the Court semed to rperesent that Hilgers "transferred the homestaed to his children to evade the Court:¶10 Hilgers own claim-His allusion- In fact, as in brief an known to the trial Court "he read the Divorce": that this was agreed by the parties in July 1998; [n1,2]Doug had never been able to, in 5 years, use this as an assett in any way,; only to attempt to pay the taxes. We have reviewed the information before the trial Court"--Egregiously they do not indicate the $31,000 was for the 2 years past income tax nor consider the %65 payments to the State (with pass through and incentive bonuses): There is no reference what so ever to Hilgers, In-camera documentation of his health status, health car bills, or his tax return interceptions (see Rehearing petition) et.al

C. The Child/Children

B.T.H. was 12, at the time of the divorce, the youngest of 4 children. Even though Brenda had temporary custody during the separation, B.T.H. resided with Doug without her objection: His Mother had told him, in the event of a divorce, he could live with either parent. V.S.H., the other minor child was given the same choice.

As Doug was surprised, B.T.H. knew nothing of the divorce while he and Doug were preparing Brenda's Birthday cake. Of course. Brenda petitioned for and received full custody of B.T.H. along with child support based upon over 30% of Doug's actual wage; Her spousal support was linked to B.T.L.'s graduation (and custody?): She continued to collect it, she did not inform the Courts

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[1] Judge Foughty further attempts to obscure the facts by preventing the children from testifying re; this "asset".

[2] It fare here to inject along with the other conflicts of interests affecting the determining tribunals (See State of the Judiciary" we are in trouble ") Judge Foughty sits on the State Courts Rules Committee and has consistently advocated against rules to consider pro se litigants.

of his living with Engalstads through the late Winter and Spring of 2001. Doug was only allowed to visit B.T.L. "In Bottineau", although Doug now had to live in Rugby due to his employment requirement to be within 15 min of work. See. Opinion ¶1." and awarded Douglas visitation.

In fact, Brenda prevented Birch from calling Doug, taking his phone cards and blocking long distance services of the phone. Nearly every visitation was met with threats of arrest, expressed as by the authority of Judge Ketterling": Upon direct challenge by Doug, he denied this. Even with days and weeks of notice, nearly every visitation attempt was obstructed. Doug made multiple contacts to the N.D.A.G.'s office, Mr. Robert Bennett, to attempt to curtail this abuse.

Birch became increasingly despondent and his mother began to become more and more punitive towards him. His older brother was now enlisted to punish? him. Finally having his head slammed against furniture and profaned, Doug attempted to get a protection order for him and supports at social services. On the day of hearing the petition was moved through 3 jurisdictions, to 100 miles from his home: He and his father could not attend. Doug brought complaint to social services and B.T.L. had an evaluation: Deemed to be depressed and at risk for suicide; Medication was recommended but B.T.L. refused. These records, upon attempting review by the Court, "were destroyed": This later, at trial , found to be false. He never received any follow up and was not permitted to keep his dental appointments. He hit his head on the floor, in gym class, losing vision in his right eye and developed a severe headache and received no medical attention until late that night, when his was able to call Doug.

From August 30, 1998- April 2001, B.T.L. was not allowed to testify at any visitation, obstruction of visitation or any other hearing: Although he witnessed

his mother removing the divorce judgement from his mail and then enlisted to return it 2 weeks later; he was never permitted to testify (" We don't allow children to testify in divorce hearings"), Swain Benson, the State's attorney had now represented Brenda immediately following the "default" hearing her Minot Attorney was allowed to withdraw.

Birch requested, at an attorney's recommendation, he requests a G.A.L.: this was refused 3 times by the trial court. Acknowledging that he was unaware of the revisions of Law March 2001. The N.D.S.C. endorsed his position September 12, 2002, Although remanding the visitation modification moved for nearly 2 years prior, it denied a G.A.L. based on Ludwig v. Burchill 514 N.W. 2d 677 (ND 1998): This decision prior to extensive amendments to N.D.C.C.14-09-06.4 siting at least ten indications for appointment: March, 2001. Astoundingly, the child affected by the case, had a G.A.L. at the previous hearing;" the Court was able to refer to the previous G.A.L. report." Doug was arrested as he left the Supreme Court Chambers in his effort to obtain just and merciful consideration for his son.

B.R.H., Doug's older son was subpoenaed to testify at the trial, by the state. He had written a very condemning statement re: his father and Doug had to examine his own Son . Doug had requested, multiple times if he could assist in returning B.T.H.,: He conceded that Doug " may have". Doug feels it fair and just to assert here, that this was one of the worst and painful events of his life.

In spite of this, there is some healing, but the state can not be interested in such dynamics. While the Jury was out, in front of B.T.H., J. Byers, Asst. N.D.A.G., to a witness and the Clerk, jokingly, states " I see that we haven't had any medical emergencies yet."
R.E. the grand-son of Hilgers and Engelstads: For Robyn Engelstad advocating for B.T.L.; For testifying for his cause: This heroic, caring, human being: Rewarded with

the threat that," SHE WILL NEVER SEE HER GRAND-SON AGAIN": This, the impact upon healing families, by the state's intrusions, " IN CAUSE OF THE PEACE AND DIGNITY OF THE PEOPLE OF NORTH DAKOTA".

As RELIEF, here, the petitioner, mercifully requests that he never be required to repeat these circumstances again.

On November 19, 2000, Doug asked of the Court to compel mediation in these visitation issues: It refused after Benson advised Brenda against it: In North Dakota, certainly permitted "Upon the Court's own motion, in the best interest of the child/children."

D.The Charge:

As in the bulk of the opinion, Particularly at¶1 Only a part of the Statutory text is eluded to See this petition Pg.3

at ¶2" 'Brenda was awarded custody"-- It is an uncontroverted fact that BTH had not lived in her home for over 3 months- In testimony, Brenda had no contact with the child and provided nothing for his keep.

at¶3 "In June Hilgers removed the minor child from Bottineau " In fact Hilgers took him to Minnesota and returned him 3 times but never to Brenda's residence: Doug informed the mother, the Sheriff, [1] the school, the Court all without any objection from any party: In June, Robyn Engelstad, at B.T.H.'s request, brought him to MN.,A neighbor drove Doug to Grand Forks in that Doug could not even drive, due to his broken neck.

On June second 2001, as fast as he could practically do so he submitted a written petition and supporting avadavit, for an emergency interim custody change.

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[1] At this time, Hilgers encountered John Tweeton, The Sheriff's dispatcher where as he offered Doug his direct observation BTH's eviction from his home.

In his Orders June 10, 2001, the trial Court eludes that BTL is on Visitation, although, again, it issues no visitation orders: It issues the financial relief with 2 months retro-activity[1]. The Court gave a scathing response to "Doug scheduling a hearing without proper motion" He refused to participate at any such hearing. (He had never read or acknowledged it.)

> See: Hilgers v. Hilgers The Trial Court abuses it's discretion when it fails to respond to non-frivolous matters."

The Court raised no issues about BTL's presence in Minnesota.

In his attempts to return BTL to return His son, many times, to Engelstads, We struck a moose breaking Doug's neck (BTL was not injured) Doug petitioned Child support to reduce the then 60% with holdings on any wages until he was back to work: They refused. They even brought a contempt charge for his not paying Support, hearing July 12,2001, scheduled for the day before the telephonic custody hearing now scheduled for July 13.[2]

Doug had also made arrangement to return BTL to N.D. to get him supportive counseling. This is when Ms. Lora Howley, social worker advised him that his records were not destroyed, as represented by Bottineau Co. Social Services, and were in Bismarck. Due to having no car now, Doug took BTL to MN. Social Services who arranged for a Sept. 24,2001 Mental health assessment and the Court were notified of such. Birch was now threatening to run away if he ever had to return to North Dakota.

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[1] Appealed from: Motion filed March 1999, decided June 2001, remanded on appeal Jan 2002 retroactivity of Support amounts

[2] Brenda had informed the Court in writing, that she refused to attend

On July 13, 2001 a phone custody hearing was scheduled by Doug, in that he had no transportation for the 1600 mile trip to Williston, N.D.[the Rustad Bench]. [see State V. Lemons 2004 ND 44) re "Determining evidentiary matters: no president;" The Court persistently offered that Doug could not be heard in his cervical brace even though he was nearly yelling into the phone. The Law enforcement officers that had expressed a willingness to testify were now unavailable. Murphy and Henry] for they had many times, witnessed the Child's injuries when he came to them for help, again, B.T.L. had no appointed Guardian ad Litem for this hearing.
The only law enforcement officer available was Steven Watson, Sheriff who had taken BTL's statement on previous beatings but never took any photographs: He was very evasive: Curiously, his phone testimony was also of very poor quality[1] It is remarkable that in his phone testimony, from California, that he denied the existence of this statement of March 2001 and the fact that Doug had requested his assistance in returning BTH
. Doug eventually moved to correct the record, but was denied. At the criminal trial, Watson's phone testimony (see Lemons, "No precedent") Brenda never contested a custody change, through out the whole hearing until the Bench had to ask her.

On August 4,2001, The Order denied a custody change siting "BTL was "not abused although, now 15, and expressly wishing to live with his father and the father son being very close, gave custody to Brenda. Doug immediately appealed and requested a Stay pending appeal. Rustad denied it;" that's just the way we do business"

[1] This/ these phone hearings were always demanded to be at Doug's expense.

Doug wrote to Brenda, asking for her assistance, if BTL, without any intervention, had to return: She never responded. Doug was now only to work with a 5#lifting restriction so he could not get much work: %65 remained withheld from his wages. He requested his adult children to assist, as well: [Re: the testimony of Beau Hilgers, at trial.]

MN. Social Services contacted Brenda and N.D. Social Services and requested their assistance; they both declined so S.S. advised Doug to enroll BTH in school: Upon contact to get his school records, Brenda resisted sending them.[1]

Doug consulted an attorney and based upon BTH's abandonment, without the Court addressing it; that he should file under the Uniform Interstate Compact Re [2]abandonment and threat of injury. This Doug did and served the petition upon the N.D. Court: They returned it rather than incorporating" that the Judges may communicate" Re: the intent of the Act.[3]
Re Order¶ 3 Doug was served with the Order September 11, before it was even issued, It speaks of a warrant: Even though Doug had been in constant contact with the NDAG, The Court, Social Services and Bottineau Schools all, without exception, unwilling to assist to return B.T.H.

Doug's father in law was gravely ill from August to October: passing away October 2,2001. Carol needed her car constantly available to travel to northern MN. to support him and her elderly mother.
The trial Court refused to allow any reference, in testimony, to this. However he permitted Bennett, in closing, to give testimony (not entered at trial) with

[1] All of this material testimony was obstructed by the Court and prosecution See State v. Lemons
[2] at¶3 "see" Hilgers made several unsuccessful custody attempts"
[3] These provisions and definitions sighted in table of Authorities.

respects to Carol's car being available to Doug, to use.

There never was a warrant until late September: Doug determined this by contacting Byres at the N.D.A.G. who said that MN would arrest him. Authorities, momentarily. Minnesota denied this Extradition was not pursued: This was issued after Doug had received fund from MN. Social Services to help return B.T.H.: Robyn Engelstad came to Grand Forks MN. to pick up BTH and Doug provided her with the gas money.

Doug requested a copy of the warrant with which to respond: Bottineu Clerk and Sheriff would not provide this until late December 2001 and only with "Mr. Bennett's approval" He immediately asked for a hearing and benefit of responding to summons (Rule 3, NDRCrimP) so as not to be arrested and further threaten his health and make it affordable to accomplish: DENIED by Ketterling[12] Doug was then arrested, in Bismarck, after walking by the N.D.A.G's office, and completing his Oral Argument of these very matters.

Given no access to phone or legal references, Hilgers Drafted a hand written Petition to the N.D.S.C, to Stay the Contempt Order that they were to review: Denied at App. #16, p. 30,31

See Dicilpline of Wilke 2001 SD 148,638 NW2d 245 "Clearly the requirement of candor towards a tribunal goes beyond simply telling part of the truth. It requires an attorney to be fully honest and forthright.

---

[1] The Clerk informed Doug that Judge Richard Geiger would preside and that" Judge Ketterling would not allow himself to precede"

[2] In the Grand Fork's case, on the same charge, State v. Sorenson, was allowed to have a phone, initial appearance, from Arizona. See; State v. Lemons

Every Court has the right to rely upon an attorney to assist it in ascertaining the truth of the case before it." What is so striking here, in the founding civil action, that Bennett describes to the trial Court, as" a minor collateral process" entailed the influence of Benson, through McKintee, and Bennett through McIntee, actually influencing the Civil Court, before the Civil process is completed, to develop this criminal charge against Hilgers; This exists in the letters faxed to the Rustad Court and the Minnesota Court.
McIntee, Benson, and Bennett clearly did not want the civil, quasi-criminal process, required under Statue to proceed i.e. hearings, testimony and evidence, in front of the Court or an alternated court and possibly a Jury (by right) Asserted a insult to the Due process rights, of Hilgers in founding the Criminal charge. As well, he was given no rights or warnings re: Criminal rights

.

E: The Trial

At #25p.34, 35 App; Appears the Court's Trial plan for 2 days of trial, at Bottineau N.D.: Doug had presented at Initial Appearance #! And #2 . at the Court's convenience, there was January "continuance". Bennett, as informed by Doug that he wished to waive a "preliminary hearing" and examine Brenda in front of a Jury: wrote a cluster of objections that Doug had to have an attorney, under Crim Rule, Rule5.-He became enraged at Doug and Related " I am not going to talk to You" Doug never did have Counsel at the time of the preliminary hearing. The "opinion" merely says at¶3 The public Counsel was withdraw when the trial court found Hilgers was not indigent" It was, in fact, by Bennett's motion "To Remove or Modify, App#25 atp.37, that provoked the Court's action. There was no "hearing as demanded in his motion; There were no subpoenas requested or issued to gain all of the information he deemed fit for review: There were no cautions re: 5 Th Amendment Rights:

There or "In Camera" review as afforded By Rule and In DuPaul: Hartyl was released before any review/hearing took place: In the questions to Hartyl : He did not even have access to the criteria for establishing indigence: either did hilgers and he sought them from the Clerk and the Court Administrator.

The Court was fully informed of Hilgers medical status and requirements for medication and C.P.AP. breathing support:

Bennett even contested return of Hilger's bail so he could afford to travel to North Dakota. To this point in winter and spring, he could only afford a motel on one occasion and had to sleep in tree rows, ice fishing houses or unheated garages. On the 2nd day of trial, Doug had not slept for 3 days and expressed to the Bench that he was exhausted.
He is very limited in how much nitroglycerine he can take because it makes him severely ill.

B.T.H. was constantly at his Father's side Doug' unquestionable responsibility, to support him and to find protection for him, in this process. His mother, again, abandoned him, in his needs. It is striking that in testimony, Mr. Bennett never addressed a single question to B.T.H re his physical, mental, treatment or the fact that he could not live in the "custodial home". ---this action in the interest of justifying the State's intrusion.

At hearing, the Bench stated "that I know you don't have any money" The Ketterling Court stated" I can understand that you are not familiar with the Rules of criminal procedure." Never the less, the Court recognizing this, granted the costs of some of Hilger's subpoenas
Also said of the Court; "You have concealed assets": Doug multiple, written and oral demanded an independent jury review of the accusation/charge, a class c felony---IS THIS A JURY QUESTION? [See in Table Authorities]

At trial, the Curt, upon Hilgers' request for Judicial Note of the Uniform Custody Act, responded," we can make a jury instruction for it."--It was never done.

The Pre trial Statement eludes to a 'pre-trail phone conference, February 28,2003, App. 24 at p. 36,37. There is not any reference to the Evidentiary hearing, by phone, for Doug to justify his subpoenas. [Se; State v. Lemons;" No president"] Doug had asked for Subpoenas since October, 2003 CrimP. 17,b "the court shall order at any time"¶39 In actuality he on the record, he denied them because: 'You can not subpoena lawyers and judges" and" he would not subpoena the out state witness"

Doug was there, he had come to pick up transcript and to read his Orders from motions, from over a week before that the Clerk would not give him by telephone, a and were relevant at this "pre-trial hearing". Steven Watson was there and heard all of the ex-parte references to witnesses, including Jon Tweeton, who Watson had refused to provide the name of, for months. This ex-parte hearing, included Watson, testimony.

Doug received no warning of nor was he prepared for this evidentiary hearing.

It remains a physical impossibility, that all or a significant part of his testimony could have been transacted at a 2 day trial, including Jury selection.

At Jury instruction deliberations/exceptions, upon Doug's claim that this would take a great deal of time: Judge Foughty merely stated " I am not going to let any of this in". Doug's Jury Instructions including re: the Interstate Act. See N.D.R.Crim.P. Re objections; "the Court shall give counsel adequate time to address their objections."

The Jury stayed out until the evening of the second day: There could not have been sufficient time for Doug's witnesses or his own testimony[1]. Doug was very ill at that time, as well as the next day. Birch was very distressed by Byres' remarks, in the hall re: Doug's health.

---

[1] The Court, Doug having no Counsel, rejected Doug's request to appoint a person to examine him.

F The Jury: Doug raises the question here that, under the Constitution of the U.S. Due Process, Jury trail; North Dakota Constitution, section 3. Jury Trial, Arizona and Champlaine Jury Instruction Standards at Impasse; and N.D.R.Ct Rule 6.9 " must not be coercive, suggestive, or unduly intrusive" Here at impasse the Court , actually barters with the Jury to offer something in lieu of the verdict they want or to continue deliberation.

Question; Is this affront to the basic principles of a jury verdict that the Court can "let the Jury off of the hook", by an/any inducement? Including a statement, that he well knows he will remove from the file of the case and verdict. Is there a lawful and constitutionally sound conviction by this verdict?

The Court uses a pattern Jury instruction, identical App#26 p.36 to the CIVIL Instruction for a "defendant" There is no CRIMINAL pattern Jury instruction approved at time of trial.

Does this jury instruction comport with the constitutional?

Requirements of self-representation: i.e. is there an intelligent, written waiver? Is the Jury mislead from the fact that under N.D.R,CrimP Rule 44 (a) that "the Court shall appoint counsel, if the defendant is unable to obtain one?

Is this why the D.N. Supreme Court does not authorize them or confer constructional validly. see

Is this a mistake of law and basic rights? Rule 52 "obvious error"?

Is it obvious error for a juror, expressed to Not being able to be impartial" remaining on the Jury and not challenged

Under California v. Green 399 U.S 149,176

Constitutional right to a Defense; Is it arbitrary, unconscionable, or unreasonable, that a defendant void of legal assistance would not have a single affirmative defense with which the jury could be instructed, to fairly determine

his guilt or innocence; Not withstanding the instruction that he and the Jury were told they would receive?

The Constitution of North Dakota, Section 4. Recites ...for libels, the jury shall have the right to determine the laws and the facts under the direction of the Court, as in other cases. **Does this fundamental and basic right, afforded, by the bedrock foundation of our system of Justice become to be construed that the Government would under application, control the facts and law that a jury considers rather than instructing or teaching them, upon their questions of relevant law?** " The Framers put a jury trial guarantee in the Constitution was that they were unwilling to trust that the Government to mark out the role of the Jury." see-Aprendi

G. The Sentence

On May 28, 2003, the trail Court well aware of the fact that and what facts under the Defendant has granted custody of the minor Son

> " I have given you a deferred sentence because of what you have been able to accomplish civilly"
>
> "Is this a paraphrase of I think that we have made a mistake here?
>
> Is this court to think that the defendant kidnapped and abducted his son, as the legislature seemed to have intended?
>
> Does this Court, under the powers granted him through the government, by the people, not in any fashion conceive that the Child as a victim here?
>
> Is this, in large part and in application due to the fact that this law was constructed as to grant special privileges to one class at the cost of all others?

Did Doug receive a vastly disproportionate sentence than what the jury, given their insight and compassion, that only a jury can decide/dispense, would have given him?

H. The Appeal/Opinion Throughout, the petitioner has indicated the grossly inadequate representation of the opinion and demonstrated to what extent they do not assist this Court in ascertaining the truth. Although attributing this lack of reference in the transcript, there exists an extensive file as demonstrated in the certified docket of the case. The petitioner was required to extend his Rehearing petition beyond Rule in order to justly address these. He did request relaxation of the Rule, in this regard but he is unaware if this was considered in the rejection of his rehearing.

I. The Legal Representation

In the case of State v. Hilgers, Not only is there an obvious lack of professional and competent representation for the Defendant but a vast disparity of quantity of resources expended by the State of North Dakota in an effort that may well not serve it's residents what so ever.

As well, as the Petitioner would understand it, there is an imperative for honesty and candor that predicate all of the instruments brought to bare, by the State upon a private citizen, particularly one that is absent any defenses for which he may be accused.

Without reservation, the petitioner expresses the utmost respect and admiration for Chief Justice VandeWalle, nearly thirty-year effort to provide constitutionally sound legal representation to the people of North Dakota..

In Blakely v. Washinton the argument raise as to go forward piecemeal or to apply a law/opinion/or safeguard "as cases arise in which such questions can be answered." or to apply them broadly and not jeopardize large groups of defendants.

As a recipient of North Dakota's Indigent Defense Systems Rule and Statutes it is apparent in reviewing cases, as authoritative references, they apply very remotely if at all to the petitioners rights and protections

The North Dakota Supreme Court has attempted to work with the Legislature, for nearly 30 years to develop a System, as would satisfy the Constitutional safeguards of the The U.S.Constitution, Amendment IV and VI but to less than full success. The Spangenberg group, amongst all states rate, North Dakota, at the bottom for cost expended per capita for Public Defense Systems. North Dakota expends less than 1/2 the Average per capita where as Montana expends 50% above the average. This is , unfortunately, likely to expressed not in the formulation of adequately constructed laws and guidelines but in reducing the overall cost by reducing the number and complexity of cases. per Chief Justice Van Vande Wallee, in his June 6,2004 Report on the state of the Court

¶9"I have been concerned for a number of years about the administration and funding of our indigent defence system."

¶9 Although the 2001 interim study did not result in legislation to solve the problems, it did serve to increase the awareness that we are in trouble with our current system."

¶9 ' I will not further belabor you with all of the deficiencies of our present contract system other than to underscore that in addition to the conflict of interest resulting from Judges operating the indigent defense system, we are woefully undefended....."

In State V. Hilgers, the Court does not render any site comparable to the Attorney General's prosecutors moving for "Removal or Modification of the Defendant's Public Counsel" In Fact, DuPaul, who was assured no jail time for D.W.I. and had previously released several Public Defenders was reassured of his in-camera privileges if he were only to make an effort at representing his indigence 527 N.W. 2d at 727; In fact his appeal was untimely by one day and wouldn't

warrant review upon these issues at all save the precedent common law as applied in Hilgers

No one is entitled to a "free" attorney
if he can afford one."

" DuPaul has not provided the Court with sufficient information for the Court to determine him indigent. Hilgers expended 3 different submissions with respect to his indigence only sparsely related in appeal

North Dakota has long used indigence application evolved from other states (Iowa) and repeatedly addressed in NDAG opinions and in the Criteria for determining Indigence, Furgison Supra (N..D. 1983)
"We adopt guidelines for trial Courts stated in Furgison(et.al) The appointment for Counsel is discretionary, but applications should be read in a light most favorable to the applicant. If a substantial issue of law or of fact exists counsel should be appointed." In

In Hardy v. U.S. 375 U.S. 277 9US 1964
' If we are to keep our democracy ther must be one commandment; Thou shall not ration justice"
Indigence must be conceived in a relative concept

Powell v. Alabama 287 U.s. 45,68-69
" Requiring the guiding hand of Counsel"

State v. Schneeweiss 2001 ND 120 as applied in opinion Hilgers ¶7 " before counsel is appointed a defendant has a burden off proof of establishing he is indigent" Scheenwies did in fact say he had consulted with his own attorney and had hired one: He in fact
released a public defender appointed to him and, as in DuPaul did not even show up at his hearing to review the issue. This was a first offence DWI by statue, without jail time.

The Guidelines that hilgers the guidelines to refer to. Hilgers beseeched the Court for time to do his research and conduct his defense with aim to reference as many authorities as possible on an issue so vastly affecting his fate.

Where in:
"A needy person is one who at the time of requesting counsel is unable , without undue financial hardship, the necessary to provide full payment of legal Council and all of expenses for representation"

Hilgers was from out of state and already had multiple conflicts of interest with attorneys in the Bottineau area.

As in DeCoteau, Doug would have been liable for recoupement as in Strange v. Kansas (chilling affect but including homestead in consideration) of N.D. System. If Hilgers were found innocent, he would still have to pay.[see Fuller v. Oregon the non-chilling effect] that would idealize the intent of Equal protection..

The trial court said at hearing'" I know that you don't have any money."
He as well asked if Doug owned any other property and knew that he did not.

The state, as well, in his representations knew as did Judge Ketterling, upon making the appointment, that was for stand by counsel because Doug was not familiar with Criminal procedure ; The outcome, not withstanding Doug's health, were predictable.
He knew , as well, that Doug had very little in the way of resources after the divorce(and likely

less[reasonable] after a 5 year saga in the Courts that goes on to this day..

Doug only asked for assistance of counsel. He never represented the demands in Farretta: For the state surely knew why he must survive this trial

J. The Record

Under North Dakota Rules, N.D.R.Crim.P. Rule 44,(b) costs and services for an adequate defense, and Griffin v. Illinois, 351 U.S. 12 in the criminal prosecution and the appeal having been granted, and not withstanding Hilgers efforts to obtain a stay in order to preserve his resources to obtain the record and even provide the record at some point,(rehearing) to assist the Court in review.— He asks if his basic rights in effectively pursuing an appeal granted, with due process protected, fatally and fundamentally altered?

K. Argument: Hilgers conditionally argues, in that he has no guiding Counsel, nor even sufficient health to represent his cause effectively That; Upon this law/offense, used upon the defects in provision of basic Constitutionally protected rights under the Constitution and Laws of the United Sates and North Dakota.

He argues that he, as well as a significant number of citizens, upon the impact upon cherished institutions require consideration of the Court's wisdom and protection to preserve their value and perpetuation, in our society, as our Founders likely intended. To be free from the misapplication of Law and of Governmental intrusion into their cherished relationships, when the product to society is not appreciated.

For, we pray, that some good must come of our misfortunes and mistakes and will lift us up.

L .Relief Requested

1. The petitioner, respectfully requests, that upon such issues, if the Court finds meritorious the petitioner., that be assisted by a competent and concerned friend of the Court, to forward such matters more effectively.
2. That the conviction , in the matter, be dissolved and overturned.
3. That the honorable Gerald v. Vande Walle, the North Dakota Courts and it's Citizens receive such direction and/or resources to enhance their public systems that service indigents, children, and families
4. That such Laws as applied in this domestic venue and not affording equal protection to all parties, including children, be stricken or modified.

Respectfully submitted

Doug Hilgers
911 S. 72nd Ave. W.
Duluth, MN.. 55807
(218) 624-5855

Jan 13, 2005

PUBLISHER'S NOTE:

ORIGINAL PAGINATION IS NOT CONTINUOUS

United States Of America

In The Supreme Court

Hilgers V. North Dakota

On Petition for Writ of Certiorari

To The Supreme Court of North Dakota

The Petitioner: Declares, under the Laws of the United States and under penalty of perjury declares that his petition and the attending references and reformats represent his truthful and good faith efforts in a just representation of his cause.

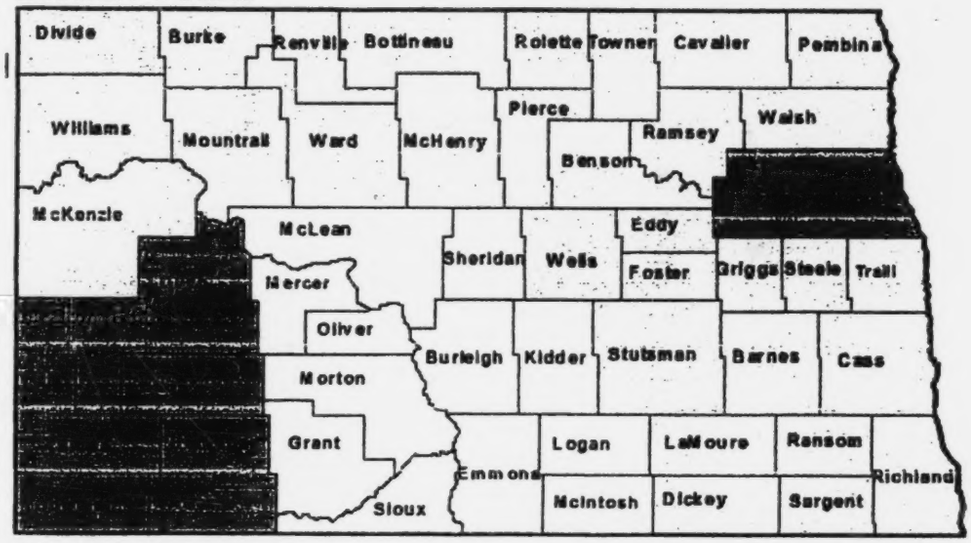
In Pro Se
Doug Hilgers Doug Hilgers on January 7 ,2005
911 S. 72nd Ave. W
Duluth, MN. 55807
(218) 624-5855

Wendy J. Wakefield 1-7-2005
WENDY J. WAKEFIELD
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

BEST AVAILABLE COPY

North Dakota Supreme Court - Districts ▲ ?

District Courts



Click on map to select District

Districts

- Northwest Judicial District
- Northeast Judicial District
- Northeast Central Judicial District
- East Central Judicial District
- Southeast Judicial District
- South Central Judicial District
- Southwest Judicial District

District Judges
Judicial Referees
District Administration
History of the District Courts

Counties

By County
Clerks of District Court
Recorders
Sheriffs
States Attorneys
Magistrates

(2)

Supreme Court, U.S.
FILED

041010 JAN 13 2005

OFFICE OF THE CLERK

Docket No._____

In The

The U.S. Supreme Court

APPENDIX

To

Petition for Writ of Certiorari

Hilgers v. North Dakota

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Notes:

December 10, 2004

Supreme Court of North Dakota
Office of the Clerk
Mr. Douglas Hilgers
Re: State v. V. Hilgers
Supreme Court Number 20030169

This will acknowledge receipt of the electronically filed original and five copies of the Motion Stay of Mandate upon petition for certiorari reconsideration for Stay of Sentence/Judgment in the above matter.

The mandate in this matter was issued September 24,2004. Upon the issuance of the mandate, jurisdiction reverts back to the trial Court. Therefore, this court has no Jurisdiction or authority to act on your request.[1]

Sincerely
S/Penny Miller
Clerk
North Dakota Supreme Court

December 8, 2004

Supreme Court of the United States

---

[1] The Petitioner has requested reconsideration due to the questionable authority of the Clerk, under spec Appellate Rule, to make jurisdictional decisions.

Office of the Clerk
Washington D.C. 20543-0001
Mr. Doug Hilgers

Re: Douglas Hilgers v. North Dakota
Application No. 04A495
Dear Mr. Hilgers

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Thomas, who on December 8,204 extended the time to and including January 13, 2005.

This letter has been sent to those designated on the attached notification list.
(Attached: The Supreme Court of North Dakota)

Sincerely,
William K. Suter, Clerk
By S/ Clayton Higgins
Case Analyst

***** December 3, 2004

A Pending, Determinative Petition

To the District Court
State of North Dakota
Ward County
Northwest Judicial District

Judge Gary Holum
Presiding Judge Robert Holt
Cc; Judge Gerald Rustad

A Petition To The Founding Civil Courts
In The Bifurcated Civil/Criminal Case

Under North Dakota Rules of the Court, Rule 62, For a new trial based upon newly exculped evidence, diligently pursued by the
Litigant and not available to the founding, Civil Court (Hilgers v. Hilgers 2002 ND 173, 653, NM 2d 79) Re: contempt/Sanctions/Orders/Custody Giving Rise to the Criminal Charge at issue;
The pendency of the Petition with the potential to leave the petition for review, moot.

In The Supreme Court
State of North Dakota

September 24, 2004

Re: State v. Hilgers
Supreme Court No. 20030169
Bottineau Co. No. 01-K-426

The mandate of the Supreme Court in this matter is being forwarded to the Clerk of Court of Bottineau County today. The opinion previously sent is now final.

Sincerely Yours
S/ Penny Miller
Clerk
North Dakota Supreme Court

In The Supreme Court
State of North Dakota

September 15, 2004

Re: State v. Hilgers

The Supreme Court entered and order today denying the petition for rehearing in this matter. Pursuant to Rule 41(a),N.D.R.App.P., the mandate of the Supreme Court will be forwarded to the Clerk of the trial court after the expiration of seven days.

Sincerely
S/ Penny Miller
Clerk
North Dakota Supreme Court

Supreme Court of North Dakota
Office of the Clerk
September 10, 2004

M. Douglas Hilgers
RE; state v. Hilgers
Supreme Ct. No. 20030169

This will acknowledge the receipt of the original six copies of the petition for Rehearing in the above matter. The original was filed September 3, 2004, the copies were filed September 8, 2004. A copy of the petition has been distributed to each member of the Court. The disk of the petition for rehearing was received and filed in my office today.

Your petition for Rehearing does not comply with the Rules. It is well over 2,500 words, thew left hand margin is less than 1 1/2 inch, and only six copies were filed: however, I have been authorized to distribute your petition to the Court for whatever consideration the Court wishes to give it.[2],[3]

Sincerely,
S/ Penny Miller
Clerk
North Dakota Supreme Court

August 18, 2004
e-mail

The Court granted an extension to September 3 for filing the petition for rehearing. Here's the language of the letter: " The court considered your motion and an extension to September 3, 2004, has been granted for the Petition for rehearing under Rule 40, NDRAppP. Additional filings are not authorized under these rules."

From Penny Miller/Clerk N.D. Supreme Court

In The Supreme Court
State of North Dakota

---

[2] It is notable that the Petitioner formally requested a relaxation of the Rules, under Rule

It is notable that the petitioner submitted the original copy + the 6 copies=7 copies, to meet the requirements of the Rules.

As sited, in the Rehearing petition, the asserted errors of fact, in the decision, were so encumbering, as to require extension past 10 pages.

The margin error, was clearly an error, leaving a 1 1/4, but clearly readable in the formal petition.

[3] **** It is not clear, in the rejection of the Petition, if it was rejected upon these technical grounds.

August 5, 2004

Re; State v. Hilgers
Supreme Court No. 20030169
Bottineau Co. No. 01-K-426

Enclosed is a copy of the Judgement entered in this case. The Judgement will be final upon disposition of a petition for rehearing, if any, or when the time for filing such petition has expired.

Sincerely,

S/ Penny Miller
Clerk
North Dakota Supreme Court

In The Supreme Court
State of North Dakota

August 4, 2003

Re: State v. Hilgers
Supreme Court No. 30020169

The Supreme Court entered judgement today in this matter wherein the criminal judgement is AFFIRMED. A copy of the decision is enclosed.

Under the N.D.R.App. P., a petition for rehearing may be filed within fourteen days from this date, during which period the mandate of the Court will be stayed. Petitions for rehearing should conform to the provisions of Rule 40, N.D.R.App.P.

Sincerely Yours
S/ Penny Miller

Clerk
North Dakota Supreme Court

In The Supreme Court
State of North Dakota

August 4, 2004

JUDGMENT
Supreme Court No. 20030169

Appeal from the district court of Bottineau County.

State of North Dakota Plaintiff and Appellee

v.

Douglas Hilgers Defendant and Appellant

This appeal having been submitted to the Court under N.D.R.App.P. 34(f), on the records and brief filed, at the December Term before:

Chief Justice Gerald W. VandeWalle, Justice William A. Neumann, Justice Dale V. Sandstrom, Justice Mary Muehlen Maring, and Justice Carol Ronning Kapsner;

And the Court having considered the appeal, it is ORDERED AND ADJUDGED that the criminal judgement is AFFIRMED.

This judgement, together with the opinion of the Court filed this date, constitutes the mandate of the Supreme Court.

Dated: August 4, 2004

By The Court
S/ Gerald V. VandeWalle
Chief Justice

Attest: s/ Penny Miller, Clerk

Filed By The Clerk if the Supreme Court Aug 4,2004

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2004 ND 160

State of North Dakota — Plaintiff and Appellee

v.

Douglas G. Hilgers — Defendant and Appellant

No. 20030169

Appeal from the District court of Bottineau County, Northeast Judicial District, the Honorable Donovan John Foughty, Judge

AFFIRMED

Opinion of the Court by Nuemann, Justice

Douglas Hilgers, pro se, 911 S. 72nd Avenue West, Duluth, Minn. , 55807, defendant and appellant, submitted on brief.

Robert p. Bennett, assistant attorney general, 600 E. Boulevard Ave., Bismarck, N.D. 58505-0040, for plaintiff and appellee; submitted on brief.

Nuemann, Justice

¶1 Douglas Hilgers appeals from the criminal judgement and sentence for the offense of removing or detaining a child in violation of a custody decree, a class C felony in violation of N.D.C.C. § 12.1-18-05. We affirm.

I

¶2 Douglas and Brenda Hilgers were divorced in 1998. They have four children, one of whom is a minor. The trial court awarded Brenda Hilgers custody of the minor child, and awarded Douglas Hilgers visitation. Brenda Hilgers currently lives in Bottineau, North Dakota, and Douglas Hilgers lives in Duluth, Minnesota

¶3 In June 2001, Douglas Hilgers removed his minor child from Bottineau, N.D. and moved the child to his home in Duluth, MN., Hilgers made several unsuccessful attempts to change custody in Minnesota. On September 13, 2001 the trial Court issued an order for the immediate return of the child, subject to contempt and other sanctions, including criminal charges, if Hilgers failed to comply. Hilgers did not comply with the Court's order, and a warrant was issued for his arrest. The minor child was eventually returned to his mother in late September 2001. Hilgers was subsequently arrested. Council was appointed at Hilger's initial appearance, but the appointment was later withdrawn when the trial court found that Hilgers was not indigent. A trial was held and the jury found hilgers guilty of removing his minor child from the state in violation of a custody decree. Hilgers appeals, raising approximately thirty-one issues relating to his conviction. Among his numerous issues, Hilgers argues (1) the trial court error3ed in finding he was not indigent; (2) the trial court erred in denying his request for a continuance; (30 the trial court erred in failing to issue all requested subpoenas; (4) the trial court erred in failing to issue his requested jury instructions; and 95) the trial court abused its discretion in the admission of testimony and evidence at trial.

II

A

¶4 Hilgers argues the trial court erroneously determined he was not indigent, and therefore, did not qualify for court-appointed counsel at public expense. Hilgers argues that he should have been granted counsel both during the trial and appellate stages of the case. We review the trial court's denial of appointment for counsel under the abuse of discretion standard. State v. DuPaul, 527 N.W.2d 238, 240(N.D. 1995).

> An abuse of discretion by the trial court is never assumed, and the burden is on the party seeking relief to affirmatively establish it. A trial court abuses it's discretion only when it acts in an arbitrary, unreasonable, or unconscionable manner, or when it's decision is not a product of a rational mental process leading to a reasoned determination. The party seeking relief must show more than that the trial court made a "poor" decision, but positively abused the discretion it has under the rule.

Flattum-Riemers v. Flattum-Riemers, 2003 ND 70¶ 7, 660 N.W..2d 558(citations omitted)

¶5 " The Sixth Amendment of the United States Constitution, made applicable to the states through the Fourteenth Amendment, and article I, § 12 of the North Dakota Constitution guarantee a criminal defendant effective assistance of counsel" Garcia v. State, 2004 ND 81, ¶5, 678 N.W.2d 568.

¶6 North Dakota Rules of Criminal procedure sets forth the right to appointment of counsel:

> Absent a knowing and intelligent waiver, every indigent defendant is entitled to have appointment at public expense to represent the defendant at every stage of the proceedings from initial appearance...through appeal in the courts of this state in all felony cases.

N.D.R.Crim.P. 44(a): DuPaul, 527 N.W.2d at 241

¶7 "There is no legal reason to appoint counsel for someone who can afford to obtain his own." DuPaul, 527 N.W.2d at 241. before counsel will be appointed , a defendant has the burden of establishing he is indigent and qualifies for appointment of counsel. State v. Schneeweiss, 2001 ND 120,¶ 10, 630 N.W. 2d 482.

¶8. On December 5,2002 the trial court removed Hilger's appointed counsel, finding Hilgers was not indigent"[b} based on a income of $31.000 gross per year and [Hilgers} claims that he transferred real estate to his children without consideration."

Hilgers contends the trial court erred in findings his assets, in the form of real property in Wisconsin, that disqualified him from appointment of counsel. However, the trial court does not appear to have adjudicated Hilgers indigent because he owns the property, as argued by Hilgers on appeal. Based on the record, it appears the trial court found Hilgers ineligible for counsel because he transferred the property without receiving consideration, not because he owned or had interest in the property. Clearly Hilgers own statements show that, at one time, he did own the property. Under our guidelines, the trial court, when determining indigency should consider;"[a] any indication that anticipatory transfer of assets by defendant to create the conditions for eligibility for defense services should be scrutinized and be dealt with decisively." N.D. Legal Counsel for Indigents Comm'n, N.D. Sup. Ct. Indigent Defense Procedures and Guidelines, Aug. 2002 at 1.2.

¶9. Additionally, in his application for court appointed counsel, Hilgers noted he earned approximately $31,000 per year. An individual with no dependants is eligible for indigent defense services if the gross annual income is at or below $11,075. N.D. N.D. Legal Counsel for Indigent's Comm'n, N.D. Sup. Ct. Indigent Defense procedures and Guidelines, Aug. 2002 at 1.4 While Hilgers would only be eligible for services, under the Guidelines, if there were at

least seven persons in his house hold, based on his listed income of $31,000. Under the Guidelines a person with a house hold of seven persons is eligible if his annual gross income is at or below $34,175, while a person with a household of six persons is eligible for services if his annual gross income is at or below $30,325. At most, six persons reside in Hilgers' household. Therefor, he would not qualify under the suggested annual gross income of the Guidelines.

¶ 10 In Hilger's Addendum to application for appointed defense Services, dated December 5, 2002, he stated

> " I own no real estate..... Mrs. hilgers, herself, requested that he Wisconsin home be given over to the four children....*********.(1998)..... I concluded as well, that it was appropriate .... I regularly seek the children's input on their interests and intentions. attempting, with the children's knowledge, to rent the property, to put toward the tax debt.....

We have reviewed the information before the trial court, specifically, hilgers' own claims that he transferred the property to his children, Hilgers' allusion to the fact that he retained control over the property, documents showing tax payments , listed income and other information contained in Hilgers' application. Because hilgers did not meet the burden of proving indigency, we conclude the trial court did not abuse its discretion in determining hilgers did not qualify for appointment for appointment of counsel during both the trial and the appellate proceedings.

B.

¶11. Hilgers also raises several other issues with regard to the indigency guidelines used by the trial courts within this state. according to hilgers, the criteria for establishing indigency are unpublished, available only to judges and counsel and, there for, unavailable to him. he claims that he is therefor unable to rebut criteria set forth in the guidelines. Hilgers also questions, on appeal, "is this issue of assets the

only criteria required to be evaluated in considering the assignment of appointed counsel, public or otherwise?"
¶12 There is nothing in the record to indicate Hilgers requested access to the indigency guidelines. in addition, we fail to see how the knowledge of the guidelines would have assisted Hilgers in meeting his burden of proving indigency. Hilgers presented all of his issues related to health, travel, occupation and a number of other factors be believed create exceptional circumstances in his case to the trial court. Despite this information, the trial court found Hilgers ineligible to receive indigent defense services.
¶13 With regard to Hilger's final issue regarding the criteria to be considered the guidelines provide consideration should be given to , "(10 income resources;(2) non-income resources ;(3) any extra ordinary financial conditions that would prevent the defendant from hiring an attorney; and (4) estimated cost of defense services." Legal Counsel for Indigent Defense Services Comm'n N.D. Sup. Ct. Indigent Defense Procedures and Guidelines, Aug. 2002, at 1.3 Additionally, the guidelines also provide list of "Exceptional Factors," to be taken into consideration, stating that,'[a] defendant whose income resources or non- income resources exceed these guidelines may still be eligible to receive legal assistance." Guidelines, 1.7 These factors include" age or physical infirmity of household members." Id.

C.

¶14 Hilgers argues his appointed counsel, later removed after the trial court determined Hilgers was not indigent,, was "negligent/ incompetent." Specifically, Hilgers argues his counsel failed to petition for review of the trial court's order removing him as counsel. Hilgers also argues appointed counsel was negligent, " having petitioned for; recusal and preserving his right to reassignment (one petition) well knowing that, upon review of the file, that Orders had already been issued. "We will treat Hilgers' issues as a claim if ineffective assistance of counsel.

¶15 On appeal, we reviewed the entire record when a claim of ineffective assistance of counsel is raised. State v. Lefthand, 523 N.W.2d 63, 69 (N.D. 1994). "If we can not readily determine that assistance of counsel was plainly defective and there exists no other grounds for reversal, then the defendant can later pursue his claim at post conviction proceeding where an adequate record can be developed." Id

¶16 To establish ineffective assistance of counsel, a petitioner must prove that his counsel's performance was so deficient as to fall below an objective standard of reasonableness and the counsel's deficient performance was prejudicial. Strickland v. Washington, 446 U.S. 668 (1984): Garcia, 2004 ND 81,¶5,678 N.W.2d 568 Generally, the second, or prejudice prong of the Strickland test can only be met if the defendant "establish[es] a reasonable probability that, but for his counsel's errors, the result of the proceeding would have been different." Syvertson v. State, 2000 ND 85,¶22,620 N.W.2d 362.

¶17 Hilgers has not demonstrated the "probable different result" that would have occurred, had his counsel petitioned for review of the trial court's order. see Lefthand, 523 N.w.2d at 70. Therefor, he has failed to demonstrate prejudice. After reviewing the entire record available to us, we can not determine counsel's performance was plainly defective.

III

¶18 Hilgers raised several evidentiary issues on appeal. Hilgers asserts the trial court erred in preventing him from offering impeachment evidence against Brenda Hilgers during the trial. Additionally Hilgers argues the trial court erred, causing Hilgers undue prejudice, by barring a witness from testifying: erred in refusing to issue subpoenas and allow out-of-state testimony: improperly referred, during his sentence hearing, to sealed files and incident involving his alleged locking of the family freezer: improperly interrupted him during his arguments at his sentencing hearing,

A.

¶19 Under Rule 10(b), North Dakota rules of Appellate procedure, an appellant is required to file a transcript with the Court on appeal. Christianson v. Christainson, 2003 ND 186,¶13, 671 N.W.2d 801. If the appellant fails to comply, he assumes the risks and consequences of such failure, Flattum-Riemers, 2003 ND 70,¶ 8, 660 N.W. 2d 558. A pro se litigant is not granted leniency solely because of his status as such. Id. We have repeatedly held, "we will decline to review an issue if the record on appeal does not allow a meaningful and intelligent review of the trial court's alleged error." Id.

¶20 Hilgers has not filed a transcript. Because we have not been provided a transcript, we are unable to provide a meaningful review of Hilgers' issues related to impeachment of his ex-wife's testimony, the trial court's reference to sealed files and the freezer incident during sentencing, Only a review of the transcript would allow us to fully consider each of the alleged errors, therefor, we conclude the above -listed issues are without merit.

¶21 We must address Hilgers' argument related to the trial Court's denial of witness from testifying and refusal of out - of-state testimony. in his brief, hilgers fails to state the identity of the witness nor does he offer the nature of the out of state testimony. Therefor we are unsure as to whether this issue was raised on the record before us, or solely during the course of the trial, for which we do not have a transcript. We will assume, however, that hilgers is referring to the trial court's refusal to allow a Minnesota social worker and Hilgers fiancée, residing in Minnesota, to testify by telephone.

¶22 We have recently addressed the issue of telephonic testimony in a criminal trial:

Under Rule 26, North Dakota Rules of criminal procedure, "In all trials the testimony of witnesses shall be taken in open Court, unless otherwise provided in statute or these rules." North Dakota case law does not address whether telephonic

testimony may be admitted at criminal trial. The civil rule equivalent, Rule 43, NDRCivP. requires testimony be taken orally in open court, but allows for deviation from the requirement under certain circumstances if all parties agree.

Because there is no precedent for such practice in criminal trials and such testimony appears to violate Rule 26, NDRCrimP, the trial court did not act arbitrarily, unreasonably, or capriciously in denying [the defendant's] request to allow [his witness] to testify by telephone. Additionally, even if the extended provisions of the civil rule were deemed applicable in this case, there was no agreement between the parties because the state objected. Therefor, the trial court properly refused to allow [the witness] to testify by telephone.
State v. Lemons, 2004 ND 44,¶¶ 10-11, 675 N.W. 2d 148. We have held that a "trial court has broad discretion in determining evidentiary matters" Id. at ¶ 12.

B.

¶ 24 Hilgers argues the trial court erred in denying several of his requested subpoenas to procure witnesses in his favor. According to Hilgers, " did the trial court error [sic] in canceling his subpoenas and not allowing them because the defendant had no funds for witness fees and other costs?"
¶25 Under the Sixth amendment of the United states Constituion, which applies to the states through the Fourteenth amendment, a criminal defendant "shall enjoy the right... to have compulsory witnesses in his favor." However we have stated that this is not an absolute right and "the defendant must show the testimony would have been favorable and material to his defense." Sate v. Treis, 1999 ND 136, ¶ 11, 597 N.W. 2d 664. " Whether the district court's refusal to issue a subpoena violates the sixth amendment is a question of law, and our standard of review for a violation of a constitutional right is de novo." Id.
¶ 26 The procedure for issueing subpoenas is set forth in Rule 17, NDRCrim.P.. Under Rule 17(b), NDRCrimP.:

Defendants Unable to Pay . The Court shall order at any time that a subpoena be issued for a service on a named witness upon an ex-parte application of a defendant upon a satisfactory showing that the defendant is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense. If the Court orders a subpoena to be issued, the costs incurred in the process and the fees of the witness so subpoenaed must be paid in the same manner in which similar costs and fees are paid in the case of a witness subpoenaed in behalf of the prosecution.

¶27 On February 21, 2003, the trial court informed hilgers that he "may petition the court ex-parte for subpoena of certain parties as witnesses at trial". The Court will sign the subpoena if you can show the court that the witness will have relevant testimony to give in your defense.....You will also have to request that because of the financial hardship the witness fees and service fees be paid by the state." The trial Court also enclosed a copy of rule 17 of the North Dakota rules of criminal procedure and a sample subpoena to assist Hilgers in his effort.

¶ 28 On March 5, 2003, the trial court Ordered the Clerk of courts to issue subpoenas to the following persons, as Hilgers requested, Robyn Engelstad; Cindy McIntee, Bottineau County Social services; Mary Rothman, Bottineau Co. Social Services; Bottineau County sheriff Steve Watson: Bottineau county deputy sheriff Sean Murphy. In this order, the trial court stated that, although Hilgers remained responsible for the expenses associated with the service and execution of a subpoena it would " insure that witness named be paid said expenses. The witnesses are to be give [sic] expense vouchers upon their appearance in court an said expenses will be paid by the Court". We also note Cyndi McIntee raised an objection to the subpoena prior to trial, but the Court still ordered her to appear, stating again that it would provide her with any expense and witness fees.

¶ 29 In another order, dated March5, 2003, the trial court denied four subpoenas, stating the subpoenas were not in compliance with rule 17, NDRCrim P.. The persons not required to appear under subpoena were: attorney Michael McIntee, BottineauCounty state's Attorney Swain Benson, District Court Judge Gerald Rustad, and Rollette County State's Attorney Mary Odonnell.

¶ 30 It does not appear to us, based on the record, that the subpoenas were denied because Hilgers was unable to afford witness fees and costs. Although hilgers correctly states the trial court denied several of his requrested subpoenas, the trial court did issue several of the requested subpoenas. On at least two occasions, the trial court stated it would ensure that all witness fees were paid. The trial court advised Hilgers he would need to comply with the requirements of Rule 17, NDRCrimP., before a subpoena would be issued. When the trial court determined Hilgers had failed to meet this requirement, it denied several suppeonas.

¶ 31 In State v. Treis, we held the trial court took reasonable steps to ensure the defendant was afforded due process, even thought the court would not issue subpoenas that failed to satisfy NDRCrimP., Rule 17. Treis, 1999 ND 136,¶ 12, 597 N.W.2d 664. In Treis, the trial court also required that before it would allow the defendant to issue a subpoena, " the defendant would have to present to this court in an n camera proceeding the factual basis that would make testimony of particular witness relevant before it would cause the state of North Dakota to be burdened with witness fees and costs." Id.

¶32. We come to the same conclusion, today. Hilgers was afforded due process despite the trial court's refusal to issue several subpoenas. A trial court is not obligated to issue every subpoena requested by a defendant. The record before us does not provide an adequate basis showing the testimony would have been both favorable and material to Hilger's defense. We can not conclude Hilger's Sixth amendment right to compulsory process was violated. Therefor, we

affirm the trial court's denial of Hilger's requested subpoenas.

IV

¶ 33. Hilgers asserts several grounds for error regarding jury instructions. Specifically, hilgers argues the trial court refused each of his requested jury instructions, and further failed to provide a basis for such refusal. According to Hilgers, the trial court erred in failing to provide several instructions, including instructions for: (1) legislative intent, (2) required intent, (3) his pro se effort, (4) a definition of "willful "and (5) the factual existence of the Uniform Child Custody Jurisdiction Enforcement Act, as set forth in NDCC § 14-14.1-15. Hilgers issue on appeal states, "Where as the trail Court permits reference to case law, in determining/answering questions re: Jury instruction, i.e. age of a child, reference to legislative intent is denied the defendant to answer questions? Did the court error?[sic]" Hilgers asserted the trial court was obligated to issue an instruction so as to not lead the jury to believe the defendant of such demeanor or poor judgement to do so.....[sic]"

¶ 35. We reiterate that our rules require an appellant to file a trial transcript and the consequences of failing to do so fall on the appellant. NDRCivP., 30(b); Christiansen, 2003 ND 186,¶ 13, 671 N.W.2d 801; Flattum-Riemers, 2003 ND 70, ¶8,660 N.W.2d 558. " we will decline to review an issue if the record on appeal does not allow a meaningful and intelligent review of the trial court's alleged error." Flattum v. Riemers, at ¶8.

V.

¶ 36 In his brief, hilgers seems to argue he was not afforded' review by a jury of peers." in North Dakota, we have a statutory scheme setting forth the proper method of both summoning a jury panel and challenging a jury panel. see NDCC ch.29-17. under NDCC§ 29-17-19,"[a] challenge to a panel can be founded only on a material departure from the forms prescribed by law in respects to drawing and return of the jury, or on intentional omission of the sheriff's summon

one or more of the jurors drawn." Additionally,"[a] challenge to a jury panel must be taken before the juror is sworn an must be in writing specifically plainly and distinctly the facts constituting the ground of the challenge." NDCC § 29-17-20. There is no transcript of the voir dire proceedings. Without a transcript, we can not provide meaningful review of the trial court's alleged error. Flattum-Reimers, 2003 ND 70¶ 8,660 N.W. 2d 558. We do not know the composition of the jury pool, nor do we know whether anyone was excluded an, if so, a basis for such exclusion. We are unable to determine whether the jury selection proceedings were prejudicial to Hilgers.

VI

¶ 37 On appeal, Hilgers argues the trial court erred in denying his request for a continuance. Hilgers moved for a continuance on March 4, 2003, and after trial court's denial on march 5, 2003, Hilgers moved for reconsideration on March 17, 2003 and again requested a continuance on March 21, 2003. According to Hilger's he showed good cause for a continuance because he did not have adequate time to prepare, despite his clear demonstration of "diligence in his pro se efforts." Hilgers also argues because there was an" irrational, unreasonable time constraint upon all process of the criminal accusation, far out of proportion to similar cases." We assume Hilgers again referring to the trial court's denial of his motions for continuance.

¶ 38 Under the North Dakota Rules of the Court, motions for a continuance will be granted only if the movant shows good cause. NDRCt 6.1(b) " We will not reverse a trial court's decision to deny a continuance absent an abuse of discretion." Interest of r.O., 2002 ND 154, ¶ 10, 652 N.W.2d 327.

¶ 39 In this case the trial court denied Hilger's request for a continuance because.

> [t]here exists no compelling reason to grant a continuance, the court recognizes the difficult task before the defendant in representing himself.

however, it is the Court's view that it is the defendant's refusal to use his resources to ire an attorney rather than indigency that places him in this predicament.

Based on the record before us, including the trial court's rational for denying Hilger's request, we conclude that the trial court did not act arbitrarily, unreasonably, or unconscionably in denying Hilgers' request for a continuance. We find no error in the trial court's decision.

¶ 40 In a related matter, Hilgers also argues that, after the "suspicious disappearance " of a cooperative witness, the trial court refused to grant a continuance to secure the presence of this witness. We presume that this request was made orally during trial because there is no evidence of this request in the record before us and Hilgers has not provided us with a transcript.

¶ 41 Without a transcript , we are unable to provide a meaningfull review of this issue we do not know if, in fact , hilgers requested such a continuance , or even whether the witness, who is not identified by hilgers on appeal, failed to appear. We cannot determine, based on the information before us, whether the trial court abused it's discretion in failing to continue the proceedings.

¶ 42 Hilgers argues the trial; court erred in failing to continue any of his challenges, despite Rule 12(b)(2), N.D.R/Crim.P. which states defects can be raised at "any time during the pendency of the proceedings," Hilgers misapplies this rule. This rule applies to "defects in the indictment, information, or complaint." Clearly, Hilgers arguments do not relate to the sufficiency of the charging document. This argument is without merit,

VII

¶ 43 Hilgers raised additional issues on appeal. We find these issues without merit.

VIII

¶ 44 The Judgement of the Trial Court is affirmed .

¶ 45 S/ William Nuemann, Mary Muehlen Maring, carol Ronning Kapsner, Dale Sandstrom, Gerald W. VandeWalle C.J.

Supreme Court of North Dakota
Office of the Clerk

August 19, 2003

Re: State v. Hilgers
Supreme Court No. 20030169 (Bottineau Co. No. 01-K-426)

This will acknowledge the receipt of the appellant's Motion for Extension of Time and Affidavit of Support. These were received and filed in my office August 18, 2003.

Your Appellant's Motion for Extension of Time was referred to the Court.

The Chief Justice requested that I reiterate to you that this Court does not directly appoint council nor do we grant preparation of transcript at public expense. The trial Court's denial of these matters are issues to be raised and briefed in your appellate brief.

Until we have confirmation whether your requested transcripts are being prepared, your request for an extension of time to file your brief to 40 days following the filing of the transcript is premature, however, at this time, the Chief Justice has granted an extension to September 19, 2003, for filing your brief.

As requested, I am enclosing a copy of this Court's Order denying the Petition for Stay of Execution of the Conviction and Sentence Pending Appeal.

Sincerely yours,

S/ Penny Miller
Clerk
North Dakota Supreme Court

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK

September 17, 2003

Re; In Re Doug G. Hilgers

Dear Mr. Hilgers
The above-entitled petition for an extraordinary writ seeking unspecified relief was received September 16, 2003. The papers are returned for the following reason(s).[4]

(Nine enumerated)

Sincerely

William K. Suter, Clerk
By; s/ Clayton R. Higgins, Jr.

Supreme Court of North Dakota
Office of the Clerk

July 17, 2003

Mr. Doug Hilgers
Re: State v. Hilgers
Supreme Court No. 20030169
Bottineau Co.. No. 01-K-426

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[4] Notably, Upon presentation to the N.D. Supreme court, for good cause for Stay, Stay denied upon this petition.

Your undated letter, which was received in my office July 16, 2003, is being treated as a request for enlargement of time to file the Appellant's brief. Under North Dakota Supreme Court Administrative Rule 5, I am granting an extension to August 20, 2003, for the appellant's brief. This is the maximum extension I am authorized to give.

In regard to the trial court's apparent denial of the preparation of transcript at public expense, this is an issue you can raise in this appeal.

I note that you state: "I have other jurors to interview and depose." I am compelled to remind you this is an appellate review. The Court can only consider the record that was before the trial court. New information, testimony or exhibits can be considered in this appeal.

For you information, pattern jury instructions can be found on the internet at www.sband.org/pattern_jury_instructions/. This is a recent posting by the State bar Association of North Dakota.

Sincerely Yours
S/ Penny Miller
Clerk
North Dakota Supreme Court

IN THE SUPREME COURT
STATE OF NNORTH DAKOTA

ORDER

On June 9, 2003 Douglas Hilgers filed a petition for Stay of Execution of the Conviction and Sentence Pending Appeal. On June 27, 2003 the state filed its Response resisting the Petition.

The Court considered the matter, and

ORDERED the petition for Stay of execution the Conviction and Sentence Pending Appeal is DENIED.

The Supreme Court of the state of North Dakota convened July 2, 2003 with the Honorable Gerald W. VandeWalle, Chief Justice, and the Honorable William a. Nuemann, the honorable Dale V. Sandstrom, Justices, directing the Clerk of the Supreme court to enter the above order. The Honorable Mary Muehlen Maring and the honorable Carol Ronning Kapsner, being unavoidably absent, did not participate in this decision.

S/ Penny Miller
Clerk
North Dakota Supreme Court

State of North Dakota
In District Court
Northwest Judicial District
County of Ward

Brenda Hilgers
Plaintiff

v. Civil No. 98-C-0959

Douglas G. Hilgers
Defendant

ORDER

The Court, upon receipt of documentation from the defendant Douglas G. Hilgers, issues a temporary change of custody as it relates to Birch Hilgers, now residing with the Plaintiff Brenda M. Hilgers. A temporary custody order will be in effect immediately and the defendant is directed to immediately pick up his son and remove him from the situation he is presently in.

The plaintiff is given notice that the receipt of documentation from her a hearing will be scheduled.

Dated at Minot North Dakota this 2nd day of April, 2003

BY THE COURT

S/ Gary A. Holum
District Judge

IN THE SUPREM COURT
STATE OF NORTH DAKOTA

ORDER

March 12, 2003

Supreme Court No. 20030064
Douglas Hilgers
v.
The Honorable Donovan Foughty
Judge of the District Court

On March 7, 2003, Douglas Hilgers filed a petition for stay of proceedings and order of protection with attachments. The Court considered the matter, and

ORDERED, inasmuch as this is not appealable, the petition for stay is considered as a Petition for Supervisory Writ, the petition for supervisory Writ is DENIED.

The Supreme Court of the state of North Dakota convened March 12, 2003 with the honorable Gerald W. VandeWalle, chief Justice, the Honorable William A. Nuemann, The Honorable Mary Muehlen Maring, The Honorable Carol Ronning Kapsner, Justices, Directing the Clerk of the Supreme Court to enter the order. The Honorable Dale v. Sandstrom, being unavoidably absent, did not participate in this decision.

S/ Penny Miller
Clerk

North Dakota Supreme Court

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

September 18, 2002
ORDER
Hilgers v. Hilgers Supreme Court No. 20010208

On September 17, 2002, Douglas G. Hilgers requested verbally, that his request for interim relief regarding the contempt order be renewed. The Court considered the matter
ORDERED, the relief requested is DENIED.
Convened September 18, 2002, the Honorable Gerald W. VandeWalle, Chief Justice, the honorable William a. Nuemann, the Honorable Mary Muhlen Maring, the honorable Carol Ronning Kapsner, Justices , V. Sandstrom unavoidably absent, did not participate in the decision.

S/ Penny Miller
Clerk
North Dakota Supreme Court

March 27, 2003

The Jury's Statement, Upon Impasse, as Approved by the Court

Upon verdict of the hung Jury, the approved statement of the trial Court, later confirmed removed from the record by Judge Fougthy.

" We the Jury, in the matter of State v. Hilgers, issue the following;

We find that we have grave concern for the health, safety, and welfare, of the child, Birch Hilgers, and that the system has failed
Him miserably."

April 14, 2003
Bottineau County North Dakota

Doug Hilgers
Re; Response to your letter of April/ 11/03
State v. Doug Hilgers
This letter is in response to your requests in letter we received today.

I have enclosed copies of the question that were asked of the Judge as the Jury was out deliberating. As to the statement that was read by the Jury foreperson, that was made part of the record in court and can be obtained through Wendy at judge Foughty's office (in form of a transcript). The hand written statement was not kept part of the file as per Judge Foughty's request.
Sincerely
S/ Rhonda Langehaug
Clerk of District Court

April 7, 2003

The Statement of the Jury Fore-person/ Mr. Dean Watson

On March 26th and 27th, 2003, I served on Jury duty in Bottineau County, North Dakota. The case we heard was a case involving Doug Hilgers and Birch Hilgers. Throughout the case Mr. Hilgers had difficult time introducing evidence that I feel could have made a huge difference in the case. We the jurors felt the system had let them down to include social services and local law enforcement. We felt that his son was not in a very good situation both physically and emotionally. We commented on this before the verdict was read. In fact I commented on this since I was the jury Foreperson for the Jury. We didn't feel justice was served and in fact only one piece of evidence lead to his guilty verdict. Judge Rustad had directed Mr. Hilgers to return Birch in 48 hours to North Dakota or he would face contempt of court and possible criminal charges. Doug's failure to comply with this was the only thing that kept us from a hung jury or a not guilty verdict. Our jury instructions told us only that we had to feel that Mr. Hilgers intentionally detained Birch, which in turn intentionally violated Mrs. Hilger's rights. Had these jury instructions included interstate law, which Mr. Hilgers provided me with after the trial he would have been found not guilty. The interstate law says that Minnesota had temporary jurisdiction if the child was in Minnesota and had been abandoned or it is necessary in an emergency to protect the child if the child is subject to or threatened with mistreatment or abuse. All of these conditions, we found to be true. We knew this and our consciences struggled with this through out our deliberations. I find it hard to believe that a parent can be prosecuted for trying to protect their own child. In addition, we found that both of the prosecution's witnesses to be unreliable and fraudulent. Their testimony was discounted entirely. As I said before, only one piece of evidence convicted Mr. Hilgers. In my opinion justice was not served. It seemed like some agencies tried to cover up and one person's personal vendetta was served. I've always thought that our children were most important and this boy's request to live with his father should have been granted long

ago. We were asked to use our common sense and it seems to me we were unable to do so. The court documents from earlier custody hearings clearly stated the boy's preference to live with his Dad. Why was this not granted? Common sense tells me that this all could have been avoided if that happened.

I feel that the court system and local agencies forced this man into a no-win situation. Who among would not do anything within their power to protect our children? Clearly his mother and a parent like that does not deserve children. She stated under oath that she would do anything for her Son but she would not go and get him. She violated her own rights by allowing Birch to leave Bottineau County. No where does it say that it was Doug Hilgers responsibility to return the Child. Therefore, common sense tells me it was both their responsibilities. Why is she not being prosecuted for abandonment? I do not profess to be knowledgeable about the law but I do know what is right and what is wrong. This is definitely wrong. The man's motives were clearly to protect his son and his temporary custody petitions that. Let's do something right here and overturn this conviction on appeal. I think he has suffered enough, don't you? I always thought our laws were meant to protect not punish those trying to protect, he's trying to protect his son's inherent rights ids no different than our troops trying to protect our inherent rights. I hope that you will do the right thing, as we were unable to. I felt terrible about this case and still do. Mr. Hilgers was able to get temporary custody within a week of this trial. That should tell you something. Please set this man and his son free.

Sincerely Yours
S/ Dean R. Watson
4-7-03

June 24.2003

From the partial transcript, At sentencing, May 28, 2003, as used by the State in contesting Petition for Stay of Judgement, N.D.Supreme Court brief, the appellee/Robert Bennett. pg 5, 8-19
(the Court)
"I However, I have gone through the past civil judgement based on the actions of your divorce; The finding of fact were that you were a very controlling individual. And in fact, in one instance they wrote down that you use to lock the freezer , so people didn't have access to it———"

August 19, 2003

State of North Dakota
Northeast Judicial District
Devils Lake, N.D. 58301
Chamber of Judge Foughty
Wendy Asperheim, Recorder

Doug Hilgers re; Letter for transcript June 29, 2003 and August 12, 2003 Bottineau Co. Criminal Case 05-01-K-426 S.c. No. 20030169

Dear Mr. Hilgers

I am in receipt of your letter dated July 29, 2003 concerning the request for transcript on appeal. This letter was received in my office on August 12, 2003. I also received a second letter dated august 12, 2003 which was received in my office August 18, 2003.

I cannot provide you with the exerpts from the transcript as you requested. Your request has not been made correctly pursuant to Rule 10 of the Appellate procedures(b)(1)(2)(3). An approximate cost for the partial transcript that you are requesting per your letters would be $997.50, which is just an estimate because you have not correctly set out the

number of copies needed pursuant to an appeal. The amount for a complete transcript is set out in my letter of June 16, 2003. Advance payment would have to be made before a transcript is completed.

I can not provide you with the other documents that you have requested. Those are no longer in the file, which is at the Supreme Court, nor can I prepare a transcript of proceedings before Judge e Ketterling. You will have to contact his recorder, Kathy Parrill for that estimate of transcript

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June 19, 2003
State of North Dakota
Northeast Judicial District
Devils Lake ,N.D.

The Chambers of Judge Foughty
Wendy Asperheim, Recorder

To Doug Hilgers Re: Bottineau Co, No 05-01-K-426 State v. Doug Hilgers

Dear Mr. Hilgers The Clerk of Bottineau Co has received a letter from you dated June 16, 2003 in which you make reference to; "It is now the time for the call for transcript." The letter was received and filed June 19, 2003 Pursuant to Appellate procedures the clerk has now transmitted your request. The notice of Appeal was filed June 11, 2003. The "Call for transcript " was filed separately on June 19, 2003. Pursuant to Rule 10 of appellate procedures you have not adequately set out what type of transcript you are requesting.

This is your notice of estimate of cost of the transcript preparation for the Jury trail held March 26 and march 27 th, 2003. The transcript would approximately be 363 pages @ a rate of $4.50 per page for five copies, plus $7.00 for shipping, and $5.00 disc for a total of $1,633.50. This amount would have to be paid in advance before the

transcript is prepared. You must send a money order made payable to V/ARS within 10 days of receipt of this notice or the transcript will not be prepared.
Sincerely S/ Wendy Asperheim

State V. Doug Hilgers: State's Requested Jury [5]Instruction,No.1
In addition to the standard opening and closing instructions

	NDJI No.
Out of Court Statements By Defendant	K5.14
Direct and Circumstantial Evidence	K-5.16
Proof of Intent	K-5.3

2003

NDJI-CIVIL[6]

K-1.20 Defendant Acting As Own Attorney

" In this case the Defendant is acting as his/her own attorney. He / She is entitled to do so. People who act as their own attorney are required to follow the same rules as an attorney would be required to follow. The Judge must be impartial and not assist either party.

February 10, 2003

State of North Dakota — In District Court
County of Bottineau — Northeast District
State V. Douglas Hilgers-Criminal Case No. 05-01-K-426

NOTICE SETTING JURY TRIAL

To Robert bennett, Asst. Attorney general

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[5] The Petitioner made written exception to the use of such pattern iinstruction and sighted the Supreme Court's caution re: authorization of such instructions-These instructions were "only available to Judges and Lawyers"

[6] The Petitioner's note: there was no commensurate , criminal Pattern Instruction at the time of trial nor was the defendant given notice of such.

Doug Hilgers, Pro se

NOTICE IS HEREBY GIVEN: That I am setting the above-entitled matter for jury trial on the 26th and 27th of March, 2003, beginning at 9:00 a.m. in the District Courthouse, Bottineau, North Dakota.

Any pre-trial motions under rue 12(b) NDRCrimP and/or notices under Rule 12.1and 12.2 of NDRCrimP should be completed and received by February 28, 2003.

In order to assist the court in the trial of the case. I would request both parties prepare a list of exibits, witnesses, and proposed jury instructions desired and submit a copy of the same to Devil's Lake by March 16, 2003. The originals should be filed with the Clerk of Court. A pre-trial telephone conference will be held February 28, 2003@ 9:00a.m. The Court will initiate the call. This is the final date for plea agreements, after that date the Court will only accept a dismissal or a guilty plea.

BY THE COURT

S/ Donovan Foughty

DISTRICT JUDGE

October 15, 2002

From: The States "Motion and Brief to Reconsider or Modify Approval of Appointment for Defense Counsel at Public Expence"Pg3¶3 " This motion is supported by the files and records of this case. At this time, the State requests that a hearing be held on the motion, at a time and place and in a manner the Court may direct."

United States Of America

In The Supreme Court

Hilgers V. North Dakota

On Petition for Writ of Certiorari

To The Supreme Court of North Dakota

The Petitioner: Declares, under the Laws of the United States and under penalty of perjury declares that his petition and the attending references and reformats represent his truthful and good faith efforts in a just representation of his cause.

In Pro Se
Doug Hilgers Doug Hilgers on January 7 ,2005
911 S. 72nd Ave. W
Duluth, MN. 55807
(218) 624-5855

Wendy J Wakefield 1-7-2005

WENDY J. WAKEFIELD
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005